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THE LORD ADVOCATES OF SCOTLAND

FROM THE CLOSE OF THE FIFTEENTH CENTURY
TO THE PASSING OF THE REFORM BILL

BY

GEORGE W. T. OMOND

ADVOCATE

VOL. II.

EDINBURGH
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CHAPTER XII.

THE REBELLION OF 1745.

CHARLES ERSKINE of Tinwald became Lord Advocate when Duncan Forbes was appointed President of the Court. He came of an old family. His grandfather, the Honourable Sir Charles Erskine of Alva, fourth son of John Earl of Mar and Lady Marie Stewart, daughter of the Duke of Lennox, married Mary Hope, second daughter of Lord Advocate Sir Thomas Hope. Of this marriage was born Sir John Erskine of Alva, father of Charles Erskine of Tinwald.

Erskine is said to have studied for the Church; but he soon abandoned the idea of taking orders. When only in his twenty-fifth year he was appointed one of the Regents of the University of Edinburgh. He held this office, in which he taught Logic, Ethics, Metaphysics, and Natural Philosophy, until 1707, when he was made Professor of Public Law in the University of Edinburgh.[1] He then resolved to be an advocate, and was called to the bar on the 14th of July 1711.[2]

For a short time after he was called he continued to give lectures; but his practice soon occupied the whole of his time.[3] In 1714 he was an Advocate-

[1] This was a Crown appointment. The only other professorship, in the University of Edinburgh, in the gift of the Crown was that of Church History.

[2] Memoirs of Kames, i. 37, 38; Brunton and Haig, 513.

[3] The Scots Courant of 12th to 14th Nov. 1711 contains the following advertisement: "Mr. Charles Erskine, her Majesty's Professor of Public Law in the University of Edinburgh, designs to begin his private Lectures on the Laws of

Depute.[1] He became one of the leaders of the bar; purchased the estate of Tinwald in Dumfriesshire; and in April 1722 was returned to Parliament as member for that county.

In May 1725, when Forbes became Lord Advocate, Erskine was appointed Solicitor-General. Hitherto the only counsel allowed to plead within the bar had been the Lord Advocate; but on this occasion a change was made. The new Solicitor-General presented to the Court a warrant under the Sign-Manual, subscribed by the Secretary of State for Scotland, in these terms: "Whereas we have appointed Mr. Charles Areskine, advocate, to be sole Solicitor for that part of Great Britain called Scotland, and we being pleased to show him a further mark of our royal favour, it is our will and pleasure that a seat be placed for him within the bar of your Court, where and from whence he may be at liberty to plead cases in your presence; and we do hereby direct you to cause such to be placed accordingly."[2]

At the general elections of 1727 and 1734 he was returned for Dumfriesshire.[3] In 1737 he succeeded Forbes as Lord Advocate, and strenuously supported the Scottish policy of the Walpole Ministry till 1741. At the general election of that year Sir John Douglas of Kelhead became member for Dumfriesshire; and Lord Advocate Erskine was returned for the Sutherlandshire district of burghs.[4] His election was, however, declared void in the following year, and he resigned office. His successor was Robert Craigie of Glendoick, to whom he wrote the following letter of congratulation:—"It's commonly believed we love our heirs but seldom our successors; and sometimes we don't our heirs

Nature and Nations, on Friday next, at 5 a'clock in the Afternoon, at his Lodgings in Fraser's Land."

[1] His appointment was peculiar. He was made Advocate-Depute, for the Western Circuit, by a Commission from Queen Anne, granted under the Privy Seal. West Circuit Record, 1st May 1714.

[2] Books of Sederunt, 10th June 1725. [3] Parl. Papers, 1878, lxii. ii. 70, 83.

[4] These burghs were Dornoch, Tain, Dingwall, Wick, and Kirkwall.

because they are to be our Successors. However that is not the case with me; you have been mentioned to the King by the Marquis of Tweeddale as my Successor, and I heartily agree to it, and wish you success and prosperity in the Office; You are happy in having to do with a Patron who is a man of truth and honour, and this is a great encouragement to you. To show I 'm sincere in all this, I have used my best endeavours you should be elected in my room, the election being found void."[1]

He returned to practice at the bar; but there was a vacancy on the bench in November 1744, and he received the appointment. Four years later he succeeded Fletcher of Milton as Lord Justice-Clerk; and died, after filling that post to the satisfaction of the country, in April 1763.[2]

Robert Craigie, who became Lord Advocate on the resignation of Erskine, was a younger son of Lawrence Craigie of Kilgraston, in Perthshire, and was born, it is supposed, in 1685. Of his early life no memorials are in existence. He was called to the bar on the 3d of January 1710; and, during the first years of his professional life, gave private lectures to students of law.[3] But his practice increased, and after a short time the lectures were given up.

After he had been five years at the bar, he was appointed, along with Lord Edward Murray, a Sheriff-Depute of Perthshire, by the Duke of Athole, who was then Hereditary Sheriff of that county. In the following year he was one of the Crown counsel named to prosecute the rebels at Carlisle.[4]

[1] Erskine to Craigie, 2d March 1742, Glendoick MSS.

[2] Brunton and Haig, 514.

[3] Memoirs of Kames, i. 42. "Mr. Robert Craigie, Advocate, begins his Lessons upon the Institutes and Digests of the Civil Law, upon the Sixth day of November next, at his Lodgings, in the Writers' Court." Scots Courant, 8th to 10th Oct. 1711.

[4] The following was the Commission which Craigie received on this occasion:

In the last chapter I have mentioned that Dundas, when Solicitor-General, appointed him to act as his depute.[1] This was in 1719. A fee-book, kept by Craigie, and commencing in this year, has been preserved, from the entries in which the progress of his business can be traced. The first fee entered is one received at the beginning of the winter session of 1719: "Nov. 10th.—Received from George Kennedy, for Gleneagles, one guinea." He does not get another fee for a week, when ten guineas are sent him. In the beginning of December he is paid, "From Thomas Fordyce, for the Trustees to the Forfeited Estates, for preparing the cases appealed, ten guineas."

His practice increased rapidly; and for the next twenty years he lived an uneventful life of plodding industry. He was not a man of brilliant talents. "He had none," says Tytler, "of the exterior accomplishments that attract attention; and though an acute and able reasoner, his manner of pleading was dry, prolix, and deficient both in grace and energy."[2] But his untiring application was rewarded; and he became one of the busiest counsel in the Parliament House. In addition to the fruits of his labours at the bar, he acquired a fortune by his marriage to Barbara Stewart,

"By his Royal Highness, the Prince of Wales: Whereas we judge it necessary in this Juncture, and in the absence of Sir David Dalrymple, his Majesty's Advocate, that some persons should be appointed to be Assessors and assistants to the said Advocate and his Majesty's Solicitor-General in all prosecutions, civil or criminal, wherein his Majesty's and the publick service is concerned, and in particular for carrying on, and bringing to a Conclusion, the Prosecutions against the Criminals, who by a Special Commission are to be tried at Carlisle; And we, being fully satisfied of your Abilities for discharging this Trust, have thought fit, and do hereby in his Majesty's Name, nominate and appoint you, and each of you, to be assessors to his Majesty's Advocate and Solicitor-General, and to be assistant in all publick Causes, to the Ends and for the Purposes aforesaid, to continue till his Majesty shall think fit to revoke the same; For which this shall be your sufficient warrant. Given at the Court at Hampton Court the 13th day of September 1716, in the third year of his Majesty's reign. By his Royal Highness's command, Townshend. To Robert Craigie and Alexander Gairdin, Esquires, Advocates at Edinburgh." Glendoick MSS.

[1] *Supra*, vol. i. p. 311.

[2] Memoirs of Kames, i. 42.

daughter and heiress of Charles Stewart of Carie. Part of his means he invested in purchasing the lands of Glendoick, in Perthshire. This estate, lying in the Carse of Gowrie, one of the richest agricultural districts in Scotland, was Craigie's favourite home. He was fond of a country life, and, whenever he could escape from his work in Edinburgh, went to Glendoick, where he planted, and farmed, and made improvements.[1] From these pursuits, and from the quiet of private life, he was suddenly hurried into a public career in the spring of 1742.

The fall of Walpole had just taken place. This crisis had been foreseen for some time. In February 1741 Sandys had moved, in the House of Commons, that an address be presented to the King, praying him to remove the great Minister from his councils. In the House of Lords a similar motion was made by Carteret, and supported by Argyll; but in both Houses Ministers were in a majority. In April Parliament was dissolved. The general election weakened the Government. In England many seats were lost, though most of the Government candidates were returned. In Scotland, in spite of the efforts of Lord Islay, who was opposed by his brother the Duke of Argyll, a majority of Opposition members were elected; and Walpole met the new Parliament, not beaten, but with a diminished party. Old veterans knew that a Government which counted on a majority of only fifteen or sixteen votes could not long continue in power. The Opposition soon showed

[1] Glendoick MSS. I have to thank the trustees of the late Major Craigie of Glendoick for an opportunity of perusing this valuable collection of manuscripts, a portion of which is printed in Jesse's "Memoirs of the Pretenders and their Adherents" (ii. 265). The Glendoick MSS. consist, in addition to private and family letters, of (1) The original commissions for the numerous appointments held by Craigie; (2) A number of memoranda connected with the government of Scotland from 1741 till 1760; (3) Drafts of proposed Acts of Parliament, with notes on the defects in the state of the law; and (4) a voluminous official correspondence between the Lord Advocate and the Secretaries and Under-Secretaries of State in London.

its strength; and, in various debates, Ministers were barely able to hold their own. Walpole did not resign; but, on the 28th of January 1742, the Opposition had a majority of one in a division on the Chippenham election petition. This narrow vote ended the long and glorious career of Walpole. Early in February he resigned, and became Earl of Orford. The Wilmington Ministry was now formed; and the chief offices were speedily filled. Wilmington was First Lord of the Treasury, Sandys was Chancellor of the Exchequer, and Carteret was Secretary of State.

I have already mentioned that the Earl of Selkirk became Secretary of State for Scotland in 1731.[1] He died in 1739; and no one had since been appointed in his place. But now Pulteney, to whom had been intrusted the task of arranging the distribution of places in the new Government, insisted that the office of Scottish Minister should be revived. The Duke of Argyll, who had been appointed Master-General of the Ordnance, with a seat in the Cabinet, desired to have in his own hands the entire control of Scottish business, together with the patronage of all offices in Scotland. But Pulteney was firm; and the Marquis of Tweeddale was appointed Secretary of State for Scotland. It was thought proper that there should be also an Under-Secretary; and this place was given to Mr., afterwards well known as Sir Andrew, Mitchell.

It was at this time that Craigie became Lord Advocate. On his appointment he received the following letter from the Secretary of State for Scotland: "Sir, My Lord Advocate's seat in Parliament being yesterday vacated, he intends to wait on His Majesty to-morrow in order to resign his Office; and as I have this day acquainted His Majesty with this his resolution, He has been pleased to order me to prepare a Warrant for your being Advocate for Scotland, which I hope shall be transmitted to you in a

[1] *Supra*, vol. i. p. 344.

very few days. It gives me great pleasure to have had so early an opportunity of showing the regard I have for you, and of recommending one so well qualified as you are to serve His Majesty in an Office of so great trust. The zeal and affection you have always shown for His Majesty's Person and Government, as well as your distinguished abilities in your profession, make me flatter myself His Majesty's choice will meet with universal approbation. The House of Commons having yesterday declared the Election of the District of Dornoch, Dingwall, &c., void, affords a present opportunity for your coming into Parliament; and as your presence there may be of great advantage to His Majesty's Service, I persuade myself you will not decline it. I have obtained assurances from the Earl of Sutherland and Lord Fortrose of their interest in these Towns on your behalf; and I hope the Earl of Morton and Colonel Douglas will be prevailed upon to concur, which will make your attempt easy. I thought proper to give you this early notice of His Majesty's gracious intentions, that you may be the better enabled to take the proper and necessary steps to forward the views of those who have now the honour to be in His Majesty's Councils." [1]

Soon after, Mitchell also wrote to the new Lord Advocate the first of many letters which passed between them: "I beg leave to seize this early opportunity of congratulating you on the honour His Majesty has done you, by appointing you his Advocate for Scotland, and to assure you that his choice is universally approved of here. It is the wish of almost every man, who thinks abilities and integrity qualifications necessary in Parliament, to see you there, but of none more sincerely than of, my Lord, your most humble servt., Andr. Mitchell. *P.S.*—When you are pleased to honor me with your Commands, direct for me at the

[1] Tweeddale to Craigie, 2d March, 1742, Glendoick MSS.

office of the Most Honorable the Marquis of Tweeddale, one of His Majesty's Principal Secretaries of State, Whitehall."[1]

The Marquis of Tweeddale and Mitchell did all in their power to assist Craigie in his new position. It was arranged that a regular correspondence should be carried on when the Lord Advocate was not in London, and that his letters should be such as Tweeddale could show to other members of the Government. Any private matters were to be written separately. In the absence of Craigie from Edinburgh it was arranged that the Solicitor-General, Robert Dundas, should write to the Secretary of State. The appointment of Depute-Advocates was left entirely to the Lord Advocate.[2]

Tweeddale was anxious that the Lord Advocate should at once obtain a seat in Parliament, and it was arranged that he should succeed Erskine, the late Advocate, who had been unseated. The Earl of Sutherland requested him to stand for the Dornoch district of burghs, and wrote as follows: "My Towns being vacant, and the Advocate declining to sitt in Parliament, I could not in my opinion chuse a more worthy representitive then you. The long Conextion you have had with my family makes me very glad its in my Power to express my friendship by a prooff: and the honesty and integrity of your Character gives me equal satisfaction that I can serve the publik by bringing you into Parlliament. I sincerly wish you success in the ensuing affair, and you may depend on a firm friend in, Sir, your most oblidgd humble servant, Sutherland."[3]

The election was conducted in accordance with the usages of the time. Craigie did not appear on the scene,

[1] Mitchell to Craigie, 6th March 1742, Glendoick MSS.

[2] "I have had many applications on behalf of different persons, who are desirous to serve as your Deputies on the Circuits; but I have refused to interfere, as thinking you could only determine who were the fittest persons for His Majesty's service and your own ease." Tweeddale to Craigie, 25th March 1742, Glendoick MSS.

[3] Earl of Sutherland to Craigie, 2d March 1742, *ibid.*

but was represented by agents. The letters which he received show that the customary intrigues were carried on in connection with the choice of the delegates from the burghs.[1] One friend writes suggesting that a sum of money should be expended in bribing the Town Councils of the various burghs; and the Lord Advocate's agent, in a letter written from Dingwall, "after a three days' debauch," declares, "There 's no argument here more powerful than strong brandy and claret." He was duly elected on the 2d of April 1742.

Lord Advocate Craigie was very unwilling to leave Edinburgh and give up his time to politics. His dislike to political life was so well known that before his appointment it had been asserted that he would not accept office. Tweeddale was not only anxious that he should have a seat in the House of Commons, but wished him to spend much of his time in London. In the autumn after his appointment the Advocate was at Glendoick, looking forward with disgust to the approaching meeting of Parliament. "I am glad," Tweeddale writes at this time, "to hear you have had such fine harvest weather; but allow me to give your lordship one advice: the less farm you have now in your own hands the more it will turn to your advantage, since your thoughts must now necessarily be diverted from giving due attention to the Plough." This hint was not taken at once. Craigie wrote both to Tweeddale and to Mitchell, begging that he might be allowed to remain in Scotland, attending to the legal duties of his office and to his private practice. Many letters on the subject passed between the Lord Advocate and the Secretary of State for Scotland, the Advocate asking leave to stay at home, and the Secretary urging him

[1] The burghs each sent a delegate, chosen by the Town Councils, and the delegates chose the member of Parliament. As there were five burghs in this district, there were five delegates, who had the election in their hands. This was the system in Scotland till 1832.

to be in London some days before the meeting of Parliament. So earnestly did Craigie resist leaving Scotland that Tweeddale apologised for the way in which he pressed him to do so. "I can assure you," he wrote, "it is no less disagreeable to me to write to you so pressingly at this time than it will be for you to read it, since I am but too sensible how very hard it is upon you, and on many accounts very inconvenient; but I am so well acquainted with the good disposition of your heart that I know any such inconveniences will have no weight with you when your friends and the real service of your country calls upon you; and I can sincerely assure you I would not write to you in this strain did not I think it necessary, as I know from the best authority it will be most agreeable here that you be here against the opening of the sessions; and however the credit of your office of Advocate may suffer in your absence in Scotland, I am sure it will not here. I own you have had a hard beginning, and a troublesome entering into public business, but I hope there is a good time coming."[1] Urged in this way Craigie found it necessary to attend to his political duties.

On one occasion Craigie's liking for country pursuits, and want of interest in business which was not purely legal, brought him under the censure of Lord President Forbes. The President transmitted to Government a memorial on the state of the revenue in Scotland. The linen manufacture, he said, was thriving; but every other industry was languishing. The fisheries had totally failed for some years; the foreign trade of Glasgow was crippled by the war with Spain; the currency was almost entirely paper. The annual expense of the Civil List, amounting to about fifty-one thousand pounds, was met chiefly out of the excise duties; but the excise had fallen nearly fifty per cent. during the last few years. The cause of this loss of revenue

[1] Tweeddale to Craigie, 26th October 1742, Glendoick MSS.

Forbes believed to be the increase in the consumption of tea. It had been noticed that while the use of tea was spreading, the revenue derived from the tea-duty was diminishing. A regular system of smuggling had been established; and tea was sold in Scotland at from half-a-crown to three or four shillings a pound. The working classes began to use it, and it took the place of ale at their morning and evening meals. "At present," Forbes exclaimed with indignation, "there are very few cobblers in any of the Burroughs of this country who do not sit down gravely with their Wives and families to Tea . . . and the Revenue of Excise has sunk in proportion as this villainous practice has grown." The remedy suggested by the President was to prohibit the use of tea by all persons who were not rich enough to buy it after the duty had been paid; and such was his hatred to "this drug," that he thought servants, even in the houses of the rich, should not be allowed to consume it. This project Forbes laid before the Lord Advocate, and pressed him to have a bill ready for the consideration of Government as soon as possible. "For," he said, "if a scheme relating to Scotland, contrived with the utmost perfection by an angel, came to be laid before an English minister or member, sitting the Parliament, or even just before it, when their heads are usually full of business more interesting, they could not so much as afford it attentive consideration." Craigie fled to Glendoick. Forbes complained to Mitchell, who gave Craigie a hint that the President was "a little out of humour;" and Craigie, in reply, declared that his holiday had been spoilt by the way in which the President had censured him for his want of interest in the tea question.[1]

But this matter was soon forgotten in the midst of the

[1] Culloden Papers, No. 235; Tweeddale to Craigie, 14th July and 18th Aug. 1743; Mitchell to Craigie, 1st Oct. 1743, Glendoick MSS.; Forbes to Mitchell, 18th Aug. 1743, Mitchell MSS. British Museum; Burton, Lives of Lovat and Forbes, 363-366.

toils and anxieties of the Rebellion. During the whole of the year 1744 there were constant rumours of secret movements against the Government. The agents of the Pretender were known to be at work; and it was reported that another attempt was to be made against the reigning family. In the spring of 1745, the battle of Fontenoy, followed by the surrender of Ghent and the fall of Ostend, raised the hopes of the Jacobite party; and the uneasy feeling which had for some time pervaded official circles was increased in the course of the summer.

The Lord Advocate's hands were full. There were in Scotland many persons against whom reasonable suspicions were entertained. The Lord President was opposed to severe measures. He had hitherto been consulted on all matters relating to the government of Scotland; but, at this crisis, Tweeddale suggested to the Lord Advocate that, in some cases, it might be advisable to act without taking the opinion of Forbes. "I know," he said, "that apprehending persons upon suspicions which afterwards may not happen to be verified will occasion clamour. But there is no help for that. Treasonable practices hardly ever could be discovered without something of that nature; . . . but I know very well you have fortitude enough to do your duty, and serve your King and country, by despising any clamour that may be raised upon you for that account."[1]

But, although the Government was fully aware that treasonable plots were being hatched in Scotland, the idea that an invasion was at hand was rejected as utterly incredible. It was thought unnecessary even to prepare the troops for active service. The horses of the dragoons, those men who afterwards covered themselves with such disgrace, were left out at grass; no immediate danger was apprehended; and only a week before the young Pretender landed

[1] Tweeddale to Craigie, 25th June 1745, Glendoick MSS.

in Scotland, the Secretary of State for Scotland wrote to the Lord Advocate saying there was no reason to alarm the country. Charles Stuart had sailed from France on the 22d of June; but it was not till the end of July that Tweeddale sent to Craigie copies of letters which Government had received from abroad, containing definite information that the Pretender was actually on his way to Scotland. On the 2d of August, Forbes wrote to Pelham and told him it was rumoured that Charles Edward was on his way to Scotland; and, at the same time, the President announced that, lest the rumour should turn out to be true, he was about to start sooner than usual for Culloden. A week before, on the 23d of July, the Pretender had landed on the island of Eriska. But, in the summer of 1745, the people who walked the streets of Edinburgh knew little about that mysterious region of moorland and stream, which lay behind the lofty mountain rampart whose dim outlines they saw rising beyond the windings of the Forth. The second week in August had come before the fact that Charles was in the Highlands was known in Edinburgh. In London the news was, of course, later. "I think it still," Tweeddale wrote to the Lord Advocate, on the 17th of August, "in my own private opinion, very doubtful if the Pretender's son be himself actually landed in Scotland, but rather incline to believe those said to be landed, from on board the frigate, are persons that have been sent by him or the Court of France, with a double view, both to alarm us here, and also previously to feel the pulse and temper of the people."

About the end of July the Government, though laughing to scorn the idea that a landing had actually taken place, were aware that an expedition had sailed for Scotland; and orders were sent to Cope, directing him to assemble the troops in proper places, and order the dragoons to take their horses in from grass. He was to consult, before making

any movement of importance, with the Lord Advocate, and the Justice-Clerk.

A great part of the responsibility of Government now fell on Craigie.[1] He superintended the provision of supplies for Sir John Cope's army; he considered the evidence against suspected persons, and granted warrants to arrest them; he issued warrants to search houses in Edinburgh for arms; he examined persons who arrived from the north, offering information; he made arrangements with the spies who were employed by Government.

One of these spies was James Macgregor Campbell, son of the celebrated Rob Roy. Campbell, who had taken the name of James Drummond, came to the Lord Advocate's house on the evening of the 1st of August, and offered to act as an informer. He knew the Jacobite agents, and was fully trusted by them. The price which he put on his services was a commission in the army. Craigie told him that he could not promise a commission, but that he would mention his name to the Secretary of State for Scotland. Campbell then said that in June he had seen a letter written by Lovat, who declared his adherence to the Stuarts, but advised caution. He also gave information as to the movements of the Duke of Perth and other Jacobites, and expressed his surprise that Government had not more accurate intelligence. He stipulated for secrecy, as his life would be in danger if there was any suspicion that he was playing a double part. He then left, promising to return in a week. On the 8th he again presented himself; and the news which he brought

[1] Family tradition ascribes Jacobite sympathies to Lord Advocate Craigie, on various grounds, *e.g.* a number of letters of the year 1745 have been destroyed; he was a friend and correspondent of Lord George Murray; and on a school-book belonging to one of his sons was found scribbled, "God save King James and all the family, James the Good and Great, God bless and restore him." But the documents which were destroyed might, perhaps, have compromised, without any good reason, some of his neighbours, who had supported the Stuarts; he was, as we shall see, grossly deceived by Lord George Murray; and his son was at school with young Lovat.

was at once sent up to London. A cousin of his own, he said, had heard young Glengarry laughing heartily at the English Government for not knowing where the young Pretender was.[1]

In the beginning of September the rebels were marching southwards. The unwilling peasants were forced to leave their homes, and follow the Pretender. The chiefs and lairds, who, impelled by various motives, had gathered round Charles, showed no pity. Threats and bribes were used to induce men to leave their families and join the insurgent army. On the 4th of September they entered Perth. Here Charles was joined by Lord George Murray. The important part which Lord George played in the course of the Rebellion is well known; and it is curious to find that a few days before he joined the rebels he had written to the Lord Advocate in the following terms: "My Lord, I wrote to you this day by the Perth post. I now (as I know it will be acceptable to your Lop. to hear anything of moment) I send you this by express, to let you know that this night about 9 o'clock Glengarry came here to wait upon my Brother (as he had given him assurances he would upon this creeticall occasion), and we all go tomorrow morning to Crieff to wait upon the Generall. Your Lop. will have much better intelegence of what passes in the North then I can pretend to give you. What Glengarry tells us is this. That Locheal and Keppoch atacked the two companys of the Royall betwixt fort Augustus and fort William, there were four or five private men of the Regular troups killd, and the rest being 82 taken prisnors. Capitain Scott was slightly wounded in the top of the shoulder. But they have not atempted anything against fort William or fort Augustus, and Glengarry is positive they neither will, nor can, they

[1] Craigie to Tweeddale, 1st Aug. 1745, Scot. MSS. Record Office; Memorandum, marked "Copy J. Drummond's Information," Glendoick MSS.

have no Cannon but small things of a pound bore. The ship that brought the Invaders is gone, and they are not above twelve or sixteen that landed with the young Pretender, and no body belonging to this county except my eldest Brother. Locheal's people, Keppoch's, Clanranalds, Appens, and Glencos are the people that are joining and gathering to a head. Glengarry says he cannot answer for it but some of his people will be with them, but is positive many of them will not, for he had assurances from them to the contrary, but thought it best to retiyre out of the country himself, as he had reason to believe there would be atempts made upon him, and as he had given my Brother Atholl assurances of his comming to him if anything of this nature should happen. It is very leat, so shall end with my best wishes that these troubles will soon be over. I . . my Lord, your Lops . . st obedient humble servant, George Murray. Excuse bad paper pen ink and w. . . . ."[1]

In the meantime there was great uncertainty in Edinburgh, not only as to the movements of the Pretender, but also as to the position of Sir John Cope. His despatches generally reached the Lord Advocate in the shape of small pieces of paper, rolled up tightly so as to escape detection if the messengers who carried them were intercepted. All those which came into Craigie's hands he sent up to the Marquis of Tweeddale. But many of Cope's letters fell into the hands of the rebels; and the doubt as to what was passing in the north was, therefore, great. The citizens were in a state of panic; and the Lord Advocate could not walk along the High Street without being stopped, and asked why the people were not allowed to arm for the defence of the town. The question of arming a regiment had been raised

[1] Letter dated, "Dunkeld, 20th August 1745," Glendoick MSS. The Lord Advocate soon heard that "poor Lord George Murray" had joined the Pretender. Craigie to Tweeddale, 7th Sept. 1745, Scot. MSS. Record Office.

soon after Cope marched to the north; and the opinion of the law officers and judges was taken on the subject. Their opinion, given on the 28th of August, was that a regiment could not be embodied without his Majesty's warrant, for which the Lord Advocate was requested to apply.

Before the royal warrant was received, the news that Perth had been occupied by the rebels reached Edinburgh. A petition was presented to the Lord Provost and Magistrates by a number of the leading citizens, praying for leave to take arms as volunteers.[1] A meeting of the Town Council was called to consider the petition; and, while it was being held, some of the councillors went and consulted the Lord Advocate and Solicitor-General, who signed the following opinion: "As it is notour that an actual Rebellion is in this country in favour of the Pretender, and that the rebels are assembled at Perth, we are humbly of opinion that it is lawful for the Magistrates to authorise the subscribers and the other well affected inhabitants to take up arms for defence of the city and support of the Government." Armed with this opinion the councillors who had been in consultation with the Lord Advocate returned to the Council Chamber. But the Provost raised a difficulty. "It is treason," he said, "to take up arms without the King's leave. The Crown lawyers have avoided meeting this objection, which can only be done by giving it as their opinion that it is not treason." On this a messenger was sent to the Advocate and Solicitor, who returned an answer to the effect that it was not treasonable for the magistrates to grant the prayer of the petition, and allow a body of men to be armed. Before many volunteers had been enrolled the royal warrant arrived. It authorised the magistrates of Edinburgh to raise one thousand men, and instructed Cope,

[1] Home, History of the Rebellion, 69; "Abstract of Intelligence relating to the behaviour of Archibald Stewart, Esqre.," Glendoick MSS.

or in his absence General Guest, who was in command of the Castle, to furnish them with arms.

While those who were loyal among the citizens of Edinburgh were arming for the defence of the town, the rebels left Perth. In London Ministers were still full of hope. "I received," Tweeddale writes to the Lord Advocate, "yours of the 12 current by express, in which you acquaint me that the day before the rebels had left Perth, and marched westward; but, as I have had no express from you since, I flatter myself they have been able to make no great progress." The Under-Secretary was equally confident. "I am in hopes," he writes, "that the Highlanders are now retreating to their own mountains, as it is now 48 hours and upwards since we heard of their motion from Perth." On the very day on which these letters were written Charles entered the Palace of Holyrood.

The rebel army had rapidly approached the capital of Scotland. On the evening of Sunday, the 15th of September, Brigadier Fowkes reached Edinburgh, and took command of the dragoons, who lay encamped to the west of the city. On the following day a small force, despatched by Charles for the purpose of seeing how the land lay, approached the dragoons, who were drawn up at Coltbridge. They at once fled in disorder. An officer hurried to the Lord Advocate, and informed him of what had taken place. It had been arranged, at a council of war held on the previous day, that, if the rebels appeared, some of the dragoons should march into the town. The Advocate, accompanied by the Solicitor-General, Dundas, went at once to the Castle, and saw General Guest, who gave an order for one hundred dragoons to enter the town. Craigie and Dundas, leaving the Castle, took horse, and rode after the dragoons, whom they overtook near Musselburgh, a village about six miles to the east of Edinburgh. The Lord

Advocate asked Brigadier Fowkes why he was leaving Edinburgh. He replied that "he did not think it safe to risk an engagement with the rebels, especially as he had so near a prospect of being joined by Sir John Cope and the Dutch; so he did not think proper to risk the hundred dragoons in Edinburgh after some suspicions he had of the magistrates' conduct."[1] At this moment a messenger from Dunbar galloped up with the news of Sir John Cope's arrival on the coast. Eager to join Cope, Fowkes and his dragoons continued their march to the east. The Lord Advocate had now to choose between going on with the troops or returning to Edinburgh. He decided to go on; and Dundas accompanied him.[2] In the evening the troops halted in a field near Prestongrange, and prepared to bivouac.[3] At a short distance was Huntington, the country house of Thomas Hay, at that time Keeper of the Signet, and afterwards one of the judges of the Court of Session. There Craigie and Dundas spent the night.

In the meantime all was confusion in Edinburgh. The dragoons, in their flight from Coltbridge, had passed along the fields to the north of the city, on which the New Town was afterwards built, and had been seen by great numbers of people.[4] All hope of resisting the rebels was at once abandoned by the majority of the townspeople, who surrounded the Lord Provost, and implored him not to sacrifice their lives by a useless resistance. A meeting of magistrates and townsmen assembled in the Goldsmiths' Hall. Some of the Town Councillors proposed that a messenger be despatched to request the return of at least a portion of the dragoons; but the Provost declared that he could not admit them without

[1] Craigie to Tweeddale, 16th Sept. 1745, Scot. MSS. Record Office.

[2] "I thought it more for his Majesty's service, that I should endeavour to attend his Majesty's forces, than either be cooped up in the Castle, or run the chance of falling into the rebels' hands." *Ibid.*

[3] Home, History of the Rebellion, 102.

[4] *Ibid.* 88.

first consulting the Lord Advocate and other officers of the Crown. A messenger was, therefore, sent to request the presence of the Advocate, Justice-Clerk, and Solicitor-General. They could not be found. Craigie and Dundas were then following the retreating dragoons in the direction of Musselburgh. The Justice-Clerk, returning a short time before from his country house at Brunstane, had been met by a crowd of people, who shouted to him that the rebels were entering the city from the west; and, on hearing this, he had ridden back to Brunstane.[1] When the messenger returned to the Goldsmiths' Hall, and informed the meeting that the officers of the Crown had left the city, the turmoil and panic increased. While some were loudly proclaiming the necessity of surrender, and others were maintaining the duty of resistance, the Pretender's message, demanding admittance, arrived. On this all thought of seriously defending the city was given up. The afternoon and evening were spent in negotiations; but, early on the following morning, the city was entered by a large body of Highlanders.[2]

When the Lord Advocate and Dundas went to bed at Huntington on the evening of the 16th, they had just left the dragoons encamped for the night in a field in the neighbourhood. When morning broke they were all gone. "A dragoon," says Home, "seeking forage for his horse, between 10 and 11 o'clock, fell into an old coal-pit, which was full of water, and made such a noise that the dragoons thought the Highlanders had got amongst them, and, mounting their horses, made the best of their way to Dunbar." Craigie and Dundas appear to have gone to Haddington, on finding that the troops had run away, there to await the arrival of Sir John Cope.

[1] Home, History of the Rebellion, 88.
[2] At 5 A.M. on the 17th of September.

The royal army left Dunbar on the 19th, bivouacked that night on a field to the west of Haddington, and on the 20th reached Prestonpans, near which they awaited the approach of the rebels, who advanced from the south-west. The whole of that day was spent by the rival forces in marching and countermarching. Craigie accompanied the General and his staff throughout the day and till late in the evening, when the watch-fires were lighted and the sentinels were posted along the margin of the morass which lay between the armies. Then, as night began to fall, dark and cold, he and Dundas rode off to Huntington.

The Government in London was not seriously alarmed until the news came that the rebel army was close to Edinburgh, and that the dragoons had fled. The Ministers then saw that they had to deal with a grave crisis; and, in answering the Lord Advocate's letter, sent from Huntington on the night of the 16th, Mitchell only ventured to express a wish that Cope might reach Edinburgh in time to save the town and hang the Provost. Each day the news from Scotland was eagerly expected. At last, about midnight on the 24th of September, a messenger reached Whitehall with a despatch from the Lord Advocate. It contained the first news of the defeat of the royal army at Prestonpans. "My Lord," Craigie wrote, "I am sorry to Write to your Lop. this melancholy news, that this morning about Day Break Sir Jo^{n} Cope and his army were attackt by the Rebells, and Intirely Defeat. The Sollicitor and I left them last night Drawn up in the field be West Seaton, and the Rebells about a Mile to the Westward. Wee heard the fireing this morning, and People that were on the field Give us account that our army is Wholly Dispersed, and a Gentleman met Brigadeer Foulks in his way to Berwick wth out any Troops. Mr. Sollicitor and I are so far in our

way to Berwick, where wee will wait your Lops farther Directions, If the Rebells allow us. The Dutch are not yet arrived." [1]

Such was the first account of the battle of Prestonpans which reached London. The unexpected news was received with consternation. Englishmen were deeply chagrined to hear that an undisciplined horde of mountaineers had put to flight King George's soldiers; and loyal Scotsmen felt as if their country was disgraced by the surrender of the capital. "I can neither sleep, eat, nor be easy," said Mitchell, in a letter to Craigie, "till this stain is wiped off the nation. I am ashamed to own myself what I am, for I can neither deny nor contradict the bold assertions of universal perfidy till the guilt is laid on those who ought to bear it."

Craigie had sent the bad news from Haddington on the day of the battle. Two days later he and Dundas reached Berwick. Cope was already there, with Brigadier Fowkes, some officers, and about four hundred dragoons. General Lord Mark Kerr had been in command when the fugitives from Prestonpans arrived. "Good God!" he exclaimed, "I have seen some battles, heard of many, but never of the first news of defeat being brought by the general officers before!" He and Cope quarrelled; and when the Lord Advocate arrived he found a hot dispute going as to which of them was in command. The quarrel lasted for some time; but Lord Mark settled it by leaving for England. Everything was in confusion. The officers blamed the privates, especially the dragoons, for the defeat; and Craigie's opinion, from what he heard, was that the disaster had been caused by the cowardice of the royal troops rather than by the numbers or bravery of the Highlanders. It would be dangerous, he

[1] Craigie to Tweeddale, Haddington, Saturday, 21st Sept. 1745, Scot. MSS. Record Office.

told the Government, to engage the rebels a second time without a visible superiority in numbers.[1]

Soon after Lord Mark Kerr had left for London, despatches addressed to him reached Berwick. The Lord Advocate proposed that Cope, as commander-in-chief, should open them, and carry out the instructions they contained. Cope, always under the influence of red tape, declined to do so. Craigie then consulted the Earl of Loudoun and Brigadier Fowkes, and the despatches were opened. They gave orders that General Guest should be directed to inform the magistrates of Edinburgh that if provisions were not duly supplied to the Castle, he would harass the town by all possible means. Copies of these instructions were made; and the Lord Advocate was intrusted with the task of finding means to transmit them to General Guest.

This was Craigie's last service in Scotland at the time of the Rebellion. His letters had been of service to the Government. Lord Stair's opinion was "that all the letters from the Advocate were wrote like a man of sense, of courage, and one versed in State business."[2] Lord Tweeddale requested him to come to London in time to be present at the opening of Parliament; and, leaving Dundas at Berwick, he started for the south. He reached London before the middle of October, and remained there till the Rebellion was at an end. But before the victory at Culloden, he had ceased to be Lord Advocate.

Early in February 1746, Pelham's determination that Pitt should be a member of the Government produced a Ministerial crisis. On the King's refusal to receive Pitt, Pelham, along with those members of Government who supported him, resigned office. Granville and Tweeddale attempted to form a Ministry. They failed; and Pelham

[1] Craigie to Tweeddale, 23d Sept. 1745, Scot. MSS. Record Office.
[2] Marchmont Papers, i. 120.

was again in power, Granville and Tweeddale being excluded from the reconstituted Ministry. Craigie shared the fortunes of Tweeddale, and was succeeded as Lord Advocate by William Grant of Prestongrange.

No Secretary of State for Scotland was appointed in place of the Marquis of Tweeddale. The office, ever since it was revived, had been a constant source of weakness to Government. In addition to the well-known matters of dispute between the rival sections of the Cabinet, the Scottish Secretaryship had led to the formation of two distinct parties, one of which supported Tweeddale, and the other of which, including Pelham among its members, endeavoured to advance the interests of Argyll. When times were quiet in Scotland little harm was done. But when the Rebellion broke out, and grave questions had to be settled, the existence of the Secretaryship was found to hamper the Government. The office was therefore abolished; and the affairs of Scotland were again managed on the plan laid down by Walpole in 1725.

When Craigie went out of office there was a vacancy on the bench.[1] In writing to his brother, Baron Craigie, on the 22d of February 1746, he says, "I believe I shall accept of the vacant gown in the Session." The judgeship was, however, given to Patrick Boyle of Shewalton; and Craigie continued to practise at the bar. He retained his seat in the House of Commons till Parliament was dissolved in June 1747.

Lord President Forbes died on the 10th of December 1747. When the King was told of his illness, he said, "He would be a loss, for on the whole he was a good man, though he had faults," and then began to speak about his successor. Craigie was named among others. There was much difficulty about choosing a new President. Dundas of Arniston, so

[1] James Elphinston, Lord Coupar, had died on 5th January 1746.

long the rival of Forbes at the bar and in politics, had been made a judge in 1737.[1] Erskine of Tinwald, who had succeeded Forbes as Advocate, was also on the bench.[2] Craigie, as we have just seen, had been succeeded as Lord Advocate by Grant of Prestongrange, who was Lord Advocate when Forbes died. These four names were all mentioned. Craigie's claims to the vacant chair were fully acknowledged; but it was known that Arniston would resign his judgeship if either Craigie or Grant was appointed. The Government felt that they must choose between Dundas and Erskine; but there were serious difficulties in the way. Argyll was against Dundas. Chesterfield expressed the feeling of many Scotsmen when he said that matters could not be arranged till the King resolved to be King of Scotland, which was what the Duke of Argyll insisted on being. Marchmont, on the other hand, told the King that Erskine had been "a notorious Jacobite." Dundas had himself written to London, before Forbes was dead, saying that the President's life was despaired of, and that he would consider it an insult if he did not succeed him. It was now understood that if he was not appointed he would retire from the bench, and do all in his power to embarrass the Government. For nine months after the death of Forbes the office of Lord President remained vacant; but in September 1748 Dundas received the appointment.

Tytler says that Craigie's mind was "peculiarly turned to the unfolding of the systematic intricacies of the feudal doctrines."[3] It appears from his papers that a great part of his practice was in cases raising questions of feudal law. Among his clients were the Duke of Buccleuch and Lord Dalkeith, the Duke of Montrose, the Earl of Rothes, the Marquis of Tweeddale, and Lord Kinnoul.

To Lord Kinnoul and his son, Lord Dupplin, Craigie

[1] *Supra*, vol. i. p. 318. [2] *Supra*, p. 3.
[3] Memoirs of Kames, i. 41.

stood in the position of both legal adviser and private friend. Their estates were managed by trustees; and the father and son, who usually lived in London, appear to have been almost at their wits' end for money. Most of their letters to Craigie are filled with pitiable entreaties that he will use his influence to raise loans for their use. Some of them are, however, of a more amusing character; and the following may be quoted, as it gives an idea of what a journey from Edinburgh to London sometimes was in the middle of last century. In October 1748 Lord Kinnoul writes to Craigie: "Your nephew would give you an account of my progress as far as Mr. Thomas Hays at Huntington. I set out from thence on Saturday Sept. 24, and arrived the Tuesday thereafter at Whitehaven, by way of Peebles, Moffat, and Carlisle, after travelling four long days Journey, through wild hills, very very long miles and bad weather. I stay'd two days with Sir James Lowther and set out from Whitehaven on Friday Sept. 30. I travelled thro' as bad hills for two days and a half more till I came to Lancaster—but at last by way of Preston, Warrington, Newcastle, Litchfield, Coventry, etc., I arrived Safe and Sound (all that was left of me) at Whitehall on Sunday last to dinner. The brutes performed wonders, and I am no less surprised at myself for holding out so stoutly trotting most days 40 miles a day, my old bones often wanted greasing, but I thank God I brought them safe here at last."[1]

In 1748 a marriage was arranged between the Marquis of Tweeddale and Lady Frances Carteret, daughter of the Earl of Granville. Craigie was requested to prepare the marriage contract; and an interesting correspondence is preserved, in which Lord Granville and his future son-in-law express themselves as under the greatest obligations to him for his services. The wedding took place in May

[1] Glendoick MSS.

1748. In October 1753 Craigie received a hurried note from Lord Tweeddale. "My wife," he wrote, "had a letter from the Earl of Granville, dated the 14th instant, wherin is the following paragraph: 'I have been in the country ever since the 6th of Septr, excepting one call which I had from London, where I went the 24th and returned the 29th; when I had from good hands that our friend Mr. Craigie would certainly be appointed President of the Session, if he pleased. I suppose by this time it is actually done,' etc. etc. I need not repeat the rest of the paragraph, which is much in your praise, as I know you are not ignorant of my Lord Granville's regard for you."

The vacancy was caused by the death of Lord President Dundas, which had taken place in the previous August. Lord Granville's information was correct. Craigie was appointed President. He took his seat on the 2d of February 1754; and presided over the Court of Session till his death on the 10th of March 1760.

Craigie's success in life was entirely the result of his habits of hard work. There was nothing brilliant about him; and, apart from the great events which took place while he was Lord Advocate, his career is chiefly remarkable as the most conspicuous instance, at the bar of Scotland, of a high position in the service of the State being attained by constant plodding, and the judicious use of moderate talents.

CHAPTER XIII.

LEGISLATION.

DURING the thirty years which followed the close of the Rebellion four Lord Advocates held office. These were William Grant of Prestongrange, Robert Dundas of Arniston, son of Lord President Dundas, Sir Thomas Miller of Glenlee, and Sir James Montgomery of Stanhope.

It was not their fortune to serve the Crown at a time so exciting as the first half of the eighteenth century. Their lives were, therefore, uneventful. But it was a period of great importance in the history of Scotland. The political problem of the day was to find what steps must be taken in order that Scotland should no longer be, as it had hitherto been, a source of weakness and danger to the empire. That problem was solved during the period which followed the Rebellion. When Craigie resigned, in the spring of 1746, the government of Scotland was a heavy burden. The Stuarts had partisans in every class of the people. The Union was still detested. It was almost impossible to vouch for the loyalty of any Scotsman. Over wide districts of the country the King's judges had practically no jurisdiction, and the law had no authority. Thirty years after, when Lord Advocate Montgomery was succeeded by Henry Dundas, all was changed. The hopes of the Jacobites were dead. The Union was quietly acquiesced in. Highlanders were fighting the battles of England with more than

English valour. Law and order were spreading, even to the most remote parts of the country. The people were loyal and peaceable.

William Grant of Prestongrange, second son of Sir Francis Grant of Cullen, was called to the bar in February 1722. In 1731 he was appointed, by the General Assembly, Procurator, or legal adviser, to the Church of Scotland, and Principal Clerk to the General Assembly.[1] In 1737 he succeeded Charles Erskine of Tinwald as Solicitor-General. After receiving this appointment he retained his places of Procurator to the Church and Clerk to the Assembly, and obtained leave to appoint a substitute if he should be "necessarily absent." It was, however, provided "that in case Mr. Grant should, at any time, receive or accept of any office which the General Assembly should consider incompatible with the present office, that then and in that case the Act should not be construed to import that he should then act by deputy."[2]

In 1742, when Lord Advocate Erskine resigned, Grant, who had been Solicitor-General for six years, seems to have thought that he was hardly used in not receiving the vacant office, which was bestowed on Craigie. To the new Lord Advocate, however, he bore no ill-will. "I perceive," he writes to Craigie, "that one argument I used with you lately, to be my assistant last term in Exchequer, has been somewhat prophetick, beyond what I believe either of us then apprehended. I cannot help regretting the fortune of the late Lord Advocate, who is a humane man, whom I always found it easy and agreeable to serve with; and it is truly a mortification to any of our profession, who is in the King's service, to

[1] Acts of Assembly, 13th May 1731; Brunton and Haig, 518.

[2] Acts of Assembly, 24th May 1737. In the following year, in consequence of applications for the offices of Procurator and Clerk, the Assembly passed an Act which practically declared that these offices were not inconsistent with that of Solicitor-General. Acts of Assembly, 13th May 1738.

see the casualties to which it is obnoxious, and that one may be taken from his private business, and then after a good many years' service, be removed from his public station, and left to gather up the other again the best he can. I am also not insensible that if he was obnoxious more than I have had occasion to be, it would have been a natural step of preferment for me to have succeeded him; and when I have said this in justice to him, and to myself, I do, with equal truth and sincerity, offer my congratulations to you upon your advancement, of which I most heartily wish you joy."[1]

Four years later, when Craigie retired, Grant was appointed Lord Advocate, on the 26th of February 1746. A few days before he received his commission he had obtained a seat in the House of Commons as member for the Elgin burghs.[2]

When the General Assembly of the Church met in May, Grant, who was in London, sent a Depute to perform the duties of Clerk in his absence. But the Assembly held that though the Solicitor-General might act as Procurator and Clerk, it was different with the Lord Advocate. Grant's offices were, therefore, declared vacant.[3]

During the Rebellion Grant had written a pamphlet, in which he discussed the pretensions of Charles Stuart. He had now, as Lord Advocate, to engage in the more practical work of framing those Acts of Parliament by which Government hoped to lessen the danger of another rebellion.

In a letter written a few days after the battle of Culloden, the Duke of Cumberland said, "If we had destroyed every man of them, such is the soil, that rebellion would

[1] Grant to Craigie, 13th March 1742, Glendoick MSS.

[2] Parl. Papers, 1878, lxii. ii. 96.

[3] Acts of Assembly, 20th May 1746. The offices of Procurator for the Church and Clerk of Assembly were at this time disjoined, and given to different persons.

sprout out again, if a new system of government is not found out for this country."[1] The new system of government which Cumberland desired was a system of stern repression. The vindictive hatred of many Englishmen to Ireland, in our own day, may enable us to understand how Englishmen felt towards Scotland at the close of the last rebellion. England, when alarmed by resistance to her authority, becomes revengeful. No allowance is made for the ignorance of those who have offended, nor for the regret of loyal subjects who feel themselves powerless to restrain their fellow-countrymen. No braver soldier than Cumberland ever served in the British army; but he permitted, if he did not encourage, his troops to commit those deeds of revengeful cruelty which are remembered when his deeds of valour are forgotten. No punishment would have been too severe for the rebel leader who shed so much blood in attempting to regain for his family the throne which it had lost. But he had broken his vow to succeed or perish; and his followers were left to the vengeance of England.

At the time when the Rebellion was finally extinguished Parliament had already been sitting for six months. Nevertheless, before the session ended, several Acts were passed for the purpose of bringing the disturbed districts of Scotland into subjection. Within a week from the day on which the news of Culloden reached Westminster, leave was given, in the House of Commons, to bring in a bill by which any suspected person, whose estate or dwelling-place was in Scotland, could be compelled to find bail for his good behaviour. Other measures followed. Many of the Episcopal clergymen had played a disloyal part; and an Act was passed which forbade all Episcopalian clergymen to conduct service without taking the Oath of Allegiance and praying

[1] Coxe, Memoirs of Pelham, i. 301, 302.

for the King by name.[1] By another Statute an effort was made to crush the warlike spirit of the Highlanders. They were forbidden to possess arms; and the penalties for disobedience were, for the first offence a heavy fine, to be sent to the Colonies on army service, or six months' imprisonment; and for the second offence, seven years' transportation.[2] Nor was the Disarming Act allowed to remain a dead letter. It was firmly administered. House after house was searched, and many weapons of war were taken away.

This Act not only disarmed the Highlanders. It also provided that no man or boy in Scotland, unless serving in the army, should, on any pretext whatever, wear a kilt or any part of the Highland dress. Tartan plaids or coats were also forbidden. The punishment for wearing tartan was six months' imprisonment for the first offence, and seven years' transportation for the second. It was on the Twelfth of August that the Act for "restraining the use of the Highland dress" received the royal assent.[3] The law against the Highland dress was vigorously enforced, and considered of great importance. The troops were ordered "to seize all offenders, and carry them, *in their dress*, to the civil magistrate, who is solely authorised to inflict the punishment the law directs." If the magistrates neglected their duty the Lord Advocate was to be at once informed. The officers were to report, from time to time, what obedience was paid to the Act,—"for they must and shall obey it."[4]

These measures were passed without difficulty; for they were of a kind with which Parliament was familiar. But the Government contemplated legislation of another kind,

[1] 19 Geo. II. cap. 38. [2] 19 Geo. II. cap. 39.

[3] Commons' Journals, 12th Aug. 1746.

[4] Heads of the Representation given by General Bland touching the Civil Administration of Scotland. Chalmers MSS. Advocates' Library, 35. 6. 4, i. 587.

the object of which was to remove some of the causes which had led to the discontent and disloyalty of the Highlands.

The Rebellion had convinced English statesmen that something must be done to strengthen the influence of the King's government in Scotland. The Heritable Jurisdictions had long been a source of weakness to the Executive; and it was now evident that the power of administering justice must no longer be handed down as an heirloom from father to son. The evils of the system were much felt soon after the Rebellion, when it was actually proposed that officers of the army should be present at the examinations of suspected persons, in order to compel the sheriffs to do their duty.

Before Parliament rose in August 1746 the Lord Chancellor moved a series of resolutions, which were meant to pave the way for the abolition of the Heritable Jurisdictions, and proposed that the judges of the Court of Session should be requested to prepare the draft of a bill for removing the inconveniences which arose from the various kinds of Heritable Jurisdictions, and for making more effectual provision for the regular administration of justice in Scotland. The draft was to be laid before the House of Lords at the beginning of next session. The judges were, at the same time, to report generally on the Heritable Jurisdictions, who possessed them, and by what means they had been created. Doubts were raised as to the competency and advantage of remitting the subject to the judges; but it was explained that the remit was made, not to the Court, but to the judges as individuals. The Lord Chancellor's resolutions were unanimously adopted.[1] The Duke of Argyll, who had a great deal at stake, "sat by in a corner," it is said, "and complained of the headache."[2]

[1] Lords' Journals, 5th Aug. 1746.

[2] Dr. Birch to the Hon. Philip Yorke, 9th Aug. 1746; Parl. Hist. xiii. 1416.

Parliament was prorogued on the 12th of August, and reassembled on the 18th of November. But the subject of the Heritable Jurisdictions was not at once brought before the House of Lords. Ministers were aware that the owners of the Jurisdictions would resist all reform, and that a measure so sweeping as the abolition of a system which had existed for generations could not be carried without a struggle, which might perhaps be desperate and prolonged. They had, therefore, sought the assistance of the judges. The judges, however, had not prepared the draft of a bill; but, after waiting till January, Government laid on the table of the House of Lords two letters from Lord President Forbes, in which he stated that the bill had not been prepared, owing to the difficulty which had been found in discovering the precise number or extent of the various Heritable Jurisdictions. The judges, it appeared, were of opinion that, so far as possible, these Jurisdictions should be abolished; and they made a number of suggestions for improving the administration of justice in Scotland. Circuit Courts, they said, should be held twice a year at Glasgow, Stirling, Perth, Aberdeen, and Inverness; and the cumbrous system by which all parole evidence was written out and embodied in the records of Court ought to be abolished.

Although the judges had not prepared a bill, Ministers were determined to deal with the question at once, while the memory of the Rebellion was still fresh. Accordingly, on the 17th of February, Lord Chancellor Hardwicke brought in a bill for the abolition of the Heritable Jurisdictions in Scotland. He made a long and eloquent speech.[1] The Rebellion, he said, was not his reason for proposing this great measure of reform, although it was the occasion on which it was introduced. His reason was neither the dread of a general spirit of disaffection in Scotland, nor the belief

[1] Parl. Hist. xiv. 9-25.

that the present owners of the Jurisdictions were unfit to be intrusted with such power. "My Lords," he said, "my true reasons are drawn from known and allowed maxims of policy. I think the parcelling out the power of jurisdiction, originally lodged in the Crown, in this manner, was a wrong and dangerous model of government; I say, of government in general, because I look upon the administration of justice as the principal and essential part of all government. The people know and judge of it by little else. The effects of this are felt every day by the meanest, in the business and affairs of common life. Statesmen indeed have their attention called off to more extensive political views: they look abroad into foreign countries, and consider your remote interests and connections with other nations. But of what utility are these views, great as they are, unless they are referred back to your domestic peace and good order? The chief office of government is to secure to us the regular course of law and justice. When the King, therefore, grants away jurisdiction, he parts with so much of his government. It is giving away so many jewels of his crown."

The measure, which was thus introduced by the Lord Chancellor, abolished all the heritable jurisdictions of justiciary, and restored the jurisdiction to the King's Courts. It abolished the hereditary sheriffships, and declared grants of them for life to be illegal. Fines imposed on criminals, which had hitherto been a source of revenue to the sheriffs, were now vested in the Crown. The bill was read a first time, but was not proceeded with in the House of Lords. A question of privilege was raised. The Jurisdictions which were to be abolished had been exercised from time immemorial. Many of them were valuable possessions. Some had been bought and sold for large sums of money. All of them were a source of profit to their possessors. With this fact in view, the Lord Chancellor had inserted in

his bill a compensation clause, under which the Court of Session was to ascertain the value of the Jurisdictions, and report it to the King in Council. This gave rise to doubts whether it was not a money bill; and the Government thought it wiser to proceed in the Commons first.

When leave was given in the House of Commons to bring in the bill, the Attorney-General and the Solicitor-General for England were directed to prepare it; but, on a subsequent day, the Lord Advocate was appointed to assist them.[1] The new measure was almost the same as that which had been explained by the Chancellor in the House of Lords. A long debate took place on the second reading. The bill was strenuously opposed, chiefly on the ground that it was a violation of the rights of property. The Ministry maintained that it would complete what was begun by the patriots who had abolished the Privy Council of Scotland, and would make the people of that country sharers in the freedom which was enjoyed by the people of England. The Opposition, on the other hand, declared that it had no foundation save in the caprice of Ministers. No interest was safe if the principle of the bill was once admitted. It was not only a breach of the Treaty of Union; but it would make the property of every man, both in England and Scotland, insecure. "Some future Minister," it was said, "may fancy, as Turkish Ministers have always done, that inconveniences have arisen, and may arise, from any subjects having a property in a land estate, and that therefore it is necessary for the public good to compel every man in the kingdom to part with his property in lands for a reasonable price."[2]

Lord Advocate Grant spoke in this debate. In the Parliamentary History the only speech which is reported is that of Lyttelton, who supported the measure with distinguished ability. But Horace Walpole mentions Grant's

[1] Commons' Journals, 1st April 1747. [2] Parl. Hist. xiv. 34.

speech in a letter to General Conway. "We have had," he says, "a great and fine day in the House on the second reading of the Bill for taking away the Heritable Jurisdictions in Scotland. Lyttelton made the finest oration possible. The Solicitor-General, the new Advocate, William Grant, and Hume Campbell, particularly the last, spoke extremely well for it, and Oswald against it. The majority was 233 against 102. Pitt was not there. The Duchess of Queensberry had ordered him to have the gout."[1] This debate was on the 14th of April. A month later, after a prolonged struggle in Committee, the bill passed by a majority of eighty-four, and was sent to the Lords.

In the Upper House the opposition was continued. Counsel were heard at the bar against the second reading. The Tory peers declared that the bill was an act of spoliation; but the Duke of Argyll supported it, saying that he had always been ready to surrender his own rights of jurisdiction, and that he thought it would be in reality a benefit to Highland landlords if the whole clan system were abolished. The Opposition did not divide the House; and this great measure, which introduced the most useful reform which had taken place in Scotland since the Union, speedily became law.[2]

The principle on which the Heritable Jurisdictions Act rested was, that if the possession by the landlords of Scotland of certain property was hurtful to the highest interests of the State, then it was the duty of Parliament to deprive them of that property. Another Act, founded on the same principle, and also affecting the owners of land, passed during this session. It abolished the system of tenure known as wardholding, under which lands were held on

[1] Walpole to Conway, 16th April 1747.

[2] 20 Geo. II. cap. 43; Parl. Hist. xiv. 51-57; Lords' Journals, $\frac{30}{21}$ May 1747; Coxe, Memoirs of Pelham, i. 353.

condition of military service rendered to the superior. So long as this system remained the country must always have been, to some extent, ready for armed rebellion. But this was not the only reason for abolishing wardholding. It gave the superior undue influence over his vassal; for, in cases where the military service could not be rendered, the law allowed the superior to exact various oppressive forms of compensation. The Government determined to sweep the whole system away; and the Lord Advocate, the Attorney-General, and the Solicitor-General for England introduced a bill for the purpose, which passed the Commons without opposition. In the other House certain amendments were made, one of which led to a conference between the two Houses, which took place in the Painted Chamber, on the 15th of June. But the Lords yielded, and the Act was passed.[1] Lands which had been held in ward from the Crown were in future to be held "blench," that is, for the payment of something merely nominal, such as a penny, or a rose. Lands which had been held in ward from a subject were in future to be held for payment of a feu-duty, that is, a sum of money, or its equivalent, paid yearly.

The session closed on the 17th of June, and on the following day Parliament was dissolved. Grant again stood for the Elgin burghs, and was elected on the 22d of July.

In the meantime the Lord Advocate had been relieved from the trouble of conducting the prosecutions which followed the Rebellion. The same course was taken as in 1716; and a number of Scotsmen were tried in England. Some were executed at London, some at York, and some at Penrith. Cromartie, Kilmarnock, and Balmerino were tried in the House of Lords on an indictment presented by the grand jury of Surrey.

[1] 20 Geo. II. cap. 50.

Lovat was impeached. The Government had, in the first instance, wished to try him in the north of Scotland, in order that the fate of so great a chieftain might awe the clans, and show them that the law could punish the most powerful of their leaders. This plan was only given up because the Government were told it would be impossible to obtain a conviction. The Duke of Newcastle wrote to the Lord Advocate and the Justice-Clerk, asking them to give their opinion "whether, in the present conjuncture, there is reason to believe that a Bill of Indictment would be found against Lord Lovat by a Grand Jury, to be summoned in the county of Inverness for that purpose, upon producing sufficient evidence to support the charge."[1] The answer of the Advocate and Justice-Clerk showed what the state of the country was. They said that there were barely twenty-four freeholders in the county of Inverness "well affected to his Majesty," exclusive of peers, Lord President Forbes, and five proprietors who had seats in the House of Commons. The twenty-four "well-affected" freeholders would not, it was thought, go the length of finding a true bill against Lovat. Therefore the Advocate and Justice-Clerk thought "that there is too much ground to doubt whether a Bill of Indictment would be found against Lord Lovat by a Grand Jury to be summoned in the county of Inverness, even upon producing sufficient evidence to support it." In consequence of this opinion the trial and execution of Lovat took place in London.

In Edinburgh the fate of Lovat excited far less interest than did the trial of Lord Provost Stewart, whose conduct had been so suspicious when the rebels were approaching the city. He was member for Edinburgh at the time of the Rebellion; and his trial was described at the time as "the most solemn trial that ever happened in this nation."

[1] 7th Oct. 1746, Scot. MSS. Record Office.

Stewart had been arrested in London, and confined in the Tower for three months. He was then admitted to bail, and, after a great deal of preliminary procedure, appeared before the High Court of Justiciary, on the 27th of October 1747, to stand his trial on an indictment, at the instance of the Lord Advocate, charging him with neglect of duty and misbehaviour in the execution of his office as Lord Provost of Edinburgh. Among the first persons examined were Craigie of Glendoick and Robert Dundas, who had been Lord Advocate and Solicitor-General at the time of the alleged offence. They were followed by a number of other witnesses. Between one and two o'clock, on the morning of the 29th, when the Court had been sitting continuously since eight o'clock on the morning of the 27th, a period of more than forty hours, several of the jury declared they could hold out no longer without some relief. Surely, they asked, neither the prosecutor nor the prisoner wished to kill them? In answer to this pathetic appeal, the Lord Advocate said he would not oppose the desire of the jury for rest; and the Court adjourned for eight hours. At eleven o'clock it reassembled; and from that time till between five and six on the morning of Saturday the 31st, the trial went on without a pause! The jury were then enclosed to consider their verdict, which was to be returned on Monday morning, the 2d of November.

As soon as the jury had retired, the Lord Advocate, exhausted with his labours, rode off to Prestongrange. In the evening a letter reached him from a friend, who said that the jury, having taken ten hours to make up their minds, had risen at five o'clock that afternoon; that, before leaving the jury-room, they had bound themselves, in a penalty of five pounds each, not to reveal their verdict till it was delivered in open Court; but that one of them had whispered, "It is not a verdict which will please the Lord

Advocate." On Monday morning the Court met, and the jury returned a unanimous verdict of not guilty. The result of the trial was greeted with enthusiasm by the inhabitants of Edinburgh, who displayed fireworks and drank toasts in honour of the event. There can be little doubt, on an impartial survey of the great mass of evidence which was given on both sides, that Stewart's conduct was not so culpable as it was thought to be by the Government of the day.[1]

The 11th of November 1747 was the last day on which claims for compensation could be made by persons who had been possessed of Heritable Jurisdictions. On and before that day a large number of claims were lodged. The total sum demanded was, in round numbers, five hundred and eighty-three thousand pounds. The Duke of Argyll headed the list with a claim for twenty-five thousand. The Duke of Gordon claimed twenty-two thousand. The Dukes of Buccleuch and Athole each claimed seventeen thousand. The smallest sum claimed, in a list of nearly one hundred and sixty claimants, was one hundred and sixty-six pounds, which was the value put on the Bailliary of Lovat. Some of these claims were, there is reason to think, almost fictitious. Lord Dalkeith, indeed, afterwards confessed to the Duke of Newcastle that both he and his father, the Duke of Buccleuch, would be better without their jurisdictions, which had cost them money. But the chance of obtaining public money could not be resisted. Some of the claims lodged in Court were accompanied by remarks addressed to the judges. "If it were at my option," said one owner of jurisdictions, "I would not have parted with them for a recompence in money, as reckoning them of the greatest consequence to my family, as my predecessors always did." Another says, "These jurisdictions being now taken from the petitioner,

[1] State Trials, xviii. 863-1070; Scot. MSS. Record Office.

without any consent asked or given upon his part, it remains to make the best of an ill bargain." Others said that, "for the public utility," they cheerfully gave up their hereditary offices. Each of these claims was considered by the Lord Advocate, who decided whether he should oppose it, on behalf of the Crown, and object either to the validity of the claimant's title to the jurisdiction or to the price at which he valued it. He had also to appear in Court as counsel in the public interest.

By the 18th of March 1748 all the cases had been heard and decided. The sum which the Court found due to the owners of the abolished jurisdictions was much smaller than what they had claimed. The Duke of Argyll received twenty-one thousand pounds, which was only four thousand less than he had asked. But the Duke of Gordon was only allowed five thousand instead of twenty-two thousand. The compensation given was, in round numbers, one hundred and fifty-two thousand pounds, or about one-third of what had been claimed.[1]

The office of Sheriff had now to be filled up in every county in Scotland. The Government knew that if proper persons were not appointed, the Act might be found to have done harm instead of good. The greatest trouble was, therefore, taken in selecting Sheriffs. Every effort was made to find men who were thoroughly loyal, as it was hoped that the new officials would be of use in spreading a spirit of attachment to the Government. The Duke of Newcastle had a list of those advocates who had been recommended for office. The competition for the vacant places was keen. Every

1 The Report of the Court of Session on the claims under the Heritable Jurisdictions Act was approved by the House of Commons, and the money was paid.—Commons' Journals, $\frac{1}{2}\frac{3}{3}$th April 1748. In consequence of the additional Circuits which were to be held under the Act, the Lords of Justiciary received an addition of £100 a year to their salaries. The pay of the Depute-Advocates was fixed at £50 for each Circuit. The judges who went on the South and West Circuits were allowed £150 for expenses, and those who went on the North Circuit had £180.

personage of influence had one or two friends whom he wished to favour; and the Minister's table was covered with letters of recommendation.[1] The patronage was, however, virtually in the hands of the Lord Advocate, who reported to Government what he thought of the various candidates. He went minutely into the qualifications of each individual. The Duke of Newcastle's list bears marks of the close scrutiny to which every one was subjected. Such notes as "Whig," "Zealous Whig," "Attends nonjuring chapels," appear after the various names. It was necessary to be careful, as the Whigs were in a minority at the bar, and every Jacobite who could show the slightest pretensions was encouraged to apply for office.[2] A list of advocates, "universally believed to be well affected," was sent up to Government.[3] It contained sixty-five names. There were probably, at that time, about two hundred members of Faculty. With much care the Sheriffs were selected. They were fully instructed in what was expected of them; and the system which was thus commenced has proved of the greatest value to Scotland.[4]

[1] Many of these are still in existence. For example: "Lord John Murray, member of Parliament for the county of Perth, begs leave to recommend to your Grace Mr. David Moncreiff, advocate, a gentleman zealously affected to his Majesty's Person and Government, to be appointed Sheriff-Deputy for the shire of Perth." Another runs thus: "We the Underscribers do attest that we have been intimately acquainted, for these several years, with Mr. James Burnett, advocate; and that we do believe him to be of Revolution Principles, and very well affected to his Majesty's Person and Government, and in that and every other respect qualified to be a Sheriff-Depute: Hew Dalrymple, Alex^r Fraser, Ro. Dundas, Henry Home." Scot. MSS. Record Office.

[2] Marchmont Papers, i. 241, 242. [3] Scot. MSS. Record Office, 1747, 1748.

[4] The following is a list of the first Sheriffs appointed under the present system:—(1.) With £250 a year of salary: *Argyll and Bute*—A. Campbell of Stonefield; *Inverness*—David Scrymgeor; *Perth*—James Erskine (son of Lord Tinwald); and *Ross and Cromertie*—Hugh Rose of Geddes. (2.) With £200 a year: *Aberdeen*—David Dalrymple (son of Lord Drummore); *Ayr*—William Duff of Crombie; *Caithness and Sutherland*—James Brodie of Spynie; *Dumfries*—William Kirkpatrick (one of the Principal Clerks of Court); *Edinburgh* – Charles Maitland of Pitrichie; *Fife and Kinross* — James Leslie (brother of Lord Rothes); *Lanark*—William Cross; *Orkney and Shetland*—Sir Andrew Mitchell of Westshore. (3.) With £150 a year: *Banff* — Robert Pringle; *Berwick*—George Ker of Westnisbet; *Dumbarton*—John Campbell of Succoth;

In March 1748 there was a vacancy on the bench. In December of the previous year Lord President Forbes had died. Even before his death the important question of his successor had been discussed at Whitehall. The claims of Charles Erskine, Dundas of Arniston, Craigie, and Grant had been considered; and Forbes had scarcely breathed his last when Erskine and Dundas appeared openly as rivals for his gown. Both had influential friends; and Chesterfield proposed to please all parties by appointing Erskine Lord President, and requesting Grant to resign his place of Lord Advocate in favour of the younger Dundas, and go on the bench. This arrangement, however, was given up; and the winter passed without the appointment of a President.

At the time of the President's death, Grant would have resented being compelled to give up his office and take an ordinary judgeship. But his health was now bad; and his position as Lord Advocate was one of great difficulty. No one could tell who was responsible for the management of Scottish affairs. Ever since the office of Secretary of State for Scotland was abolished it had been uncertain who ought to take charge of the business which had been in the hands of the Marquis of Tweeddale. The Lord Advocate was overworked; and this state of things continued for some time.[1] Grant, therefore, was ready to go on the bench. He

Elgin and Nairn—John Grant (son of Lord Elchies); *Forfar*—G. Brown of Colston; *Haddington*—James Hamilton (brother of Lord Belhaven); *Kincardine*—Francis Garden; *Kirkcudbright*—Thomas Miller (afterwards Lord Glenlee); *Linlithgow*—John Gillon of Wallhouse; *Peebles*—James Montgomery (afterwards Sir James Montgomery of Stanhope); *Renfrew*—Charles Macdowall of Crichen; *Roxburgh*—Gilbert Elliot (son of Lord Minto); *Selkirk*—Charles Campbell (son of Lord Monzie); *Stirling and Clackmannan*—David Walker; *Wigtown*—Alexander Boswell, younger of Auchinleck. Scots Mag. x. 155.

[1] "I showed Mr. Pelham your letter of the 28th of May. Who the Scottish Minister is at present, Mr. Pelham is at a loss to know. He can't tell but that character may be as applicable to yourself as to any other person."—Dupplin to Craigie, 9th June 1748, Glendoick MSS. It is difficult to trace the management of Scottish business from this time until Henry Dundas became Lord Advocate in 1775. Letters are addressed, in May 1761, "To the Under-Secretary for Scotch affairs attending the Earl of Bute's office." Scot. MSS. Record Office.

had no chance of being Lord President. That appointment now lay between Dundas and Erskine. In September Dundas was promoted; and, some months later, the seat which he had filled as an ordinary judge was given to James Graham of Easdale. Thus Grant was compelled to remain Lord Advocate.

In the session of 1749 he spoke, with great applause, in the debate on a payment of money to the city of Glasgow for losses sustained during the Rebellion. Much jealousy was caused by the Government proposals. Yet they were just. For many years, at each Constitutional crisis, at the Revolution, at the Union, and at both the Jacobite Rebellions, the people of Glasgow had displayed a more robust spirit than the people of Edinburgh. In 1745 Edinburgh swarmed with Jacobites. The Duke of Cumberland declared that the Court of Justiciary ought to be removed to Glasgow from Edinburgh, which he regarded as the nest of rebellion.[1] Glasgow, on the other hand, raised two regiments for service against the Pretender; and, as a punishment for this and for the coldness with which the inhabitants received him, Charles exacted from the Corporation, on his retreat from England, upwards of nine thousand pounds. This sum the magistrates had to borrow, and, in doing so, they were obliged to find security for a further sum of about a thousand pounds. Government now proposed to pay to the

This was probably James Stewart Mackenzie of Rosehaugh, brother of the Earl of Bute, who was at that time member for Ross, and who was appointed Keeper of the Privy Seal of Scotland in 1763. In the Marchmont Papers there are frequent allusions to the uncertainty with regard to the management of Scottish business. The existence of a separate Minister for Scotland had, ever since the Union, been such a fertile source of evil that the Government was very unwilling to appoint a "Scottish Secretary." On the other hand, there were many matters connected with Scotland which the Secretaries of State found great difficulty in managing. The Lord Advocate, who was an Officer of State, was always in Parliament, and, therefore, the Government threw more and more of the Scottish business into his hands. When, in 1775, Dundas became Advocate, he assumed the entire control of everything connected with Scotland.

[1] Coxe, Memoirs of Pelham, i. 302.

Corporation ten thousand pounds; and a resolution for the purpose was carried in Committee of Supply. There were long debates on the subject. The Opposition denied that there was more reason for showing favour to Glasgow than for showing favour to many counties and corporations in the north of England. One argument, which made a great impression on English members, was that Glasgow would, in a few years, run away with the whole trade of England; that so rich a city might have defended itself, and had, therefore, no just claim for compensation. It was also said that the usual rule of nations was not to give compensation for losses sustained by war, but that, if a sum was to be paid to Glasgow, the expense should be defrayed out of the rents of the forfeited estates which had come into the possession of the Crown after the Rebellion.

Lord Advocate Grant summed up the debate, speaking after both Pitt and Pelham. He gave instances, from recent history, of compensation for losses by war, and then answered the argument that Glasgow should have defended itself. "But the honourable gentleman," he said, "who spoke last[1] has set up a new doctrine; he was pleased to say, sir, that as there was no invasion by any body of foreign troops, all those places that suffered by the Rebellion deserved to suffer, because they did not defend themselves. It was lucky for him that the rebels did not come near any place where he had a concern, for if they had, I believe he would have taken care not to broach any such doctrine, which is a doctrine no one will adopt who knows the difference between the people of a fruitful country, who think of nothing but industry, agriculture, and manufactures, and the people of a barren, mountainous country, who think of nothing but idleness, arms, and military exercises; for against the latter the former must always defend themselves by a regular

[1] Mr. Henry Bathurst, member for Cirencester.

standing army." He concluded by pointing out that the produce of the forfeited estates could not be immediately available for the purpose of repaying the sums exacted from Glasgow by the Pretender; "and as the demand now under consideration requires immediate satisfaction, I shall be for agreeing to the motion." The question was then put, and the motion was agreed to.[1]

The Disarming Act and the Act by which Heritable Jurisdictions were abolished had been of great benefit to the country. But for a long time after the Rebellion the state of the Highlands continued to be a source of grave anxiety to the Government. The strength of the Jacobites had been thoroughly broken at Culloden; but the baneful spirit of Jacobitism still survived, and the northern counties remained in a disturbed condition. At Fort-William and Fort-Augustus, almost the only places where troops could winter, a strong force was assembled; and the passes leading into the more inaccessible districts were carefully guarded by a line of outposts. "By this disposition," General Bland writes in 1749, "the thieves, with their brethren in iniquity, Jacobites, nonjuring parsons, Popish priests, and rogues of all denominations, with several of the attainted rebels and excepted persons, were drove into Lochaber, where they lived at discretion, holding Councils and sending out well-armed parties for plunder." It was with great difficulty that this and other bands of rebels were dislodged by the King's troops. Matters were made worse by the conduct of many against whom no definite charge could be brought. Complaints were presented to Government "of the bad inclinations and insufficiency of those who presided in the Sheriff-Courts before the Jurisdiction Act took place, and of three-fourths of the petty lawyers in Scotland being Jacobitishly inclined, and yet these being the people em-

[1] Parl. Hist. xiv. 497-538; Commons' Journals, 14th April 1749.

ployed by the nobility and gentry;"[1] and there was a party in England which maintained that the only policy by which Scotland could be governed was a policy of constant and indiscriminate severity.

But the principles of Duncan Forbes had been adopted by the Government. Forbes, while laughing at the Act against the Highland dress, had approved of the Disarming Act.[2] Nevertheless he was, in 1745 as in 1715, strongly of opinion that the true method of quelling disaffection was to take measures for improving the condition of the people. This was also the opinion of Pelham, under whose administration an Act was passed in 1752 which proved of immense benefit to the Highlands.

In 1746 the forfeited estates of certain rebels, Lovat, Perth, Cameron of Lochiel, Macpherson of Cluny, Stewart of Ardshiel, and others, had been vested in the Crown for the use of his Majesty. These estates were put under the control of the Court of Exchequer for Scotland; and the Barons of Exchequer appointed factors to collect the rents and attend to the interests of the Crown. A bill was now prepared for annexing these forfeited estates to the Crown unalienably, and devoting the rents to the promotion of the welfare of the Highlands. This bill, part of the wise policy which the Ministry was following towards Scotland, was introduced in the House of Commons by Lord Advocate Grant in February 1752.[3] It provided that the rents of the

[1] Chalmers MSS. Advocates' Library, 35. 6. 4, i. 588.

[2] "Unnecessary severitys create pity. Pity from unnecessary severitys the most dangerous; nurse to disaffection, especially if continued for any time." Memorandum of "Detached ideas briefly recorded as they occurred; with the intention of their being afterwards digested, and laid before Ministers," Culloden Papers, No. 326. "With respect to the bill for altering the Highland dress, which, if I understand anything, is no more than a chip in poindage, which, without disarming, signifies not one halfpenny; . . . I do not wonder that you, and a great many wise men where you are, who know nothing at all of the matter, should incline to it."—Lord President Forbes to Lord Lyon, 8th July 1746, Culloden Papers, No. 332. [3] Commons' Journals, 24th Feb. 1752.

forfeited estates should in future be applied "to the purposes of civilising the inhabitants upon the said estates, and other parts of the Highlands and Islands of Scotland, the promoting amongst them the Protestant Religion, good government, industry, and manufactures, and the principles of duty and loyalty to his Majesty, his heirs and successors, and to no other use or purpose whatsoever." Leases for twenty-one years were to be granted, at a rental of about one-fourth less than the real annual value; and the tenants were bound not to sublet. If a tenant agreed to lay out a sum not less than five years' rent on improvements, within seven years from the date of his lease, then he could obtain a lease for forty-one years. The holdings were not to exceed twenty pounds of yearly value. Provision was also made for erecting schools on the forfeited estates, "or in other parts of the Highlands and Islands of Scotland, for instructing young persons in reading and writing the English language, and in the several branches of agriculture and manufactures."

The Lord Advocate's bill was attacked by the Opposition; but a large majority of the House supported it. One member declared that the measure would do more for the Highlands than either the Disarming Act or the Jurisdictions Act. "Feed the clans, and they will obey; starve them, and they must rebel," he said. The Lord Advocate, Pelham, Sir William Yonge, and Mr. Oswald were the most prominent speakers in the debates on the bill, which passed the Commons with only one division, in which Government had a large majority.

In the Lords, the Opposition, secretly encouraged by the Duke of Cumberland, strenuously resisted the proposals of the Ministry. The Duke of Bedford, in leading the attack on Government, declared that if such mild measures were applied to Scotland rebellion would become a national

malady. The second reading was, however, carried by a majority of eighty votes to twelve, and the bill became law without further difficulty.[1]

This measure, following on the abolition of the Heritable Jurisdictions, was a complete change from the old methods by which English statesmen had been accustomed to introduce peace and order into a disaffected province of the empire. The Act had passed; it remained to be seen whether it would succeed. A political party or a Ministry may be able to legislate, but unable to govern. It is one thing to pass an Act of Parliament; it is another thing to administer it. Much, if not everything, must depend on the local authorities on whom devolves the duty of carrying out the intentions of the Legislature. Fortunately, in 1752, Government had able and conscientious servants in the Scottish judges of the Court of Exchequer and the Lord Advocate. Of Grant Tytler says: "There was in him a rectitude of moral feeling, and a principle of virtuous integrity, which regulated the whole of his conduct; and these, accompanied with a candour of judgment, a liberality of sentiment, and a winning gentleness of manners, were the pure offspring of a warm and benevolent heart. These qualities shone conspicuously in his discharge of the office of King's Advocate, which he held for six years, soon after the Rebellion 1745-46. In that situation, his conduct in the adjustment of the claims on the forfeited estates merited universal approbation. It was regulated by a principle of equity tempering the strictness of the law, and indicated a mind superior to all the illiberal prejudices that are the offspring of party spirit."[2] The conduct of the Barons of Exchequer was equally praiseworthy. The minutes of their proceedings show that they were tireless in

[1] 25 Geo. II. cap. 41; Parl. Hist. xiv. 1235-1270; Coxe, Memoirs of Pelham, ii. 214-220.

[2] Tytler, Memoirs of Kames, i. 40.

their exertions on behalf of the Highland tenants, that they inquired into the facts of each case with the utmost care, and that, when a dispute arose between a factor and a tenant, they frequently gave the tenant the benefit of any doubt which might exist.

Much difficulty was caused by the ignorance of the people. The only Parliamentary news which, at that time, was published in Edinburgh appeared in the shape of "An extract of a private letter from London" printed in the Scots Courant or the Caledonian Mercury. The news was always at least a week old, and consisted merely of a bare recital of what had been done, without comment or explanation. In the Highlands, it need scarcely be said, where few of the people could have read the newspapers, even if they had contained explanations of the measures of Government, the tenants on the forfeited estates understood almost nothing of what was done in Parliament. All they knew was that their old landlords, whose hereditary power they regarded with superstitious reverence, had been deprived of their estates on account of the Rebellion, and that factors, appointed by a Court whose authority they were apt to under-estimate, were demanding payment of the rents.

Payment of rent was frequently resisted. Burt, travelling in the Highlands many years before, had found that the tenants believed "that they have a kind of hereditary right to their farms, and that none of them are to be dispossessed, unless for some great transgression against their chief, in which case every individual would consent to their expulsion."[1] The Highland landlords, regarding their tenants as a source of power rather than of revenue, had done much to encourage this belief by seldom evicting them for not paying their rents. But now, on the forfeited estates, the judicial rent was rigorously exacted. The factors had been chosen

[1] Burt, Letters from a Gentleman in the North of Scotland, ii. 158 (ed. 1815).

with the same care which was taken in appointing Sheriffs on the passing of the Jurisdictions Act. Every effort was made to select persons of ability and undoubted attachment to the Government. No one was appointed who was either a kinsman of the forfeited family, or who was likely to be under the influence of the neighbouring lairds. But the very qualities which made the factors useful officials exposed them to the enmity of the people among whom they lived. They were under military protection, which prevented frequent assassinations. Two agrarian murders, however, did take place. In the first of these the victim was not a factor, but an officer of the army. In 1746 the head of a family which had been evicted waylaid a party of soldiers, and shot the officer in command. The murderer was known, but he was never apprehended.[1] The second case was in 1752; and the Government resolved to punish some one.

Prominent among the factors in the Western Highlands was Colin Campbell of Glenure, to whom had been intrusted the difficult task of managing the forfeited estates of Lochiel and Ardshiel. The people with whom he had to deal were among the most unruly in the country; and he seems to have been on bad terms both with them and with the Court of Exchequer. In November 1749, "Mr. Campbell of Glenure, factor on that part of Lochiel's estates holding of the Duke of Gordon, as also on Dungallon's estate, having represented to the Barons that he could not levy the rents without the assistance of the military, (*the Barons*) ordered Mr. Moncrieffe, Secretary, to write General Churchill to give orders to the officers at Fort-William to give a party of the military to attend the said Mr. Campbell."[2] In May 1751 Campbell wrote to the Barons saying that John M'Lauchlan of Greenhall accused

[1] Stewart, Sketches of the Highlands, ii. Append. Z (ed. 1822).

[2] "Minutes of the Court of Exchequer, relating to the Estates forfeited Anno 1745; or Abstract of the Procedure of the Right Honourable Barons in managing these Estates," MSS. Advocates' Library, 28. 1. 7, i. 23.

him of having "maliciously turned him out of his possession," and declaring that he had no private quarrel with the tenant. "My only motive," he wrote, "of removing him is his bad payments of the rents, which he carried so far as a little before Martinmas last to carry his whole cattle and other effects off these grounds, to put it out of my power to do myself and constituents justice by levying the rents, and that upon a bare suspicion of my intention to be paid of him; which, and (*the fact that*) he would by no means agree to pay the Judicial Rent made me look upon him as a very unfit tenant for me to deal with."[1] He offered to come to Edinburgh and justify his conduct; but, after an inquiry, the Barons ordered him to "desist from distressing the said Mr. M'Lauchlan." In July 1751 he was severely reprimanded for having let a farm contrary to the orders of the Court.[2] In the following year he met his death at the hands of an assassin. He had resolved to evict a number of tenants on the estate of Ardshiel. The evictions were to take place on the 15th of May 1752. On the previous day Campbell, accompanied by an Edinburgh lawyer, a sheriff's officer, and a servant, was riding along a road near Ballachulish at the entrance to Glencoe. As Campbell, who was at some distance from his companions, passed through a wood which overhung the road, he was suddenly shot in the back; and his companions coming up found him lying in a pool of blood, where he died almost immediately.[3]

Suspicions were at once roused that the murder had been committed by a Highlander named Allan Stewart, and that James Stewart, a kinsman of the Ardshiel family, had been

[1] Letters relating to the Forfeited Estates, MSS. Advocates' Library, 28. 1. 6, i. 150.

[2] Minutes, 25th July 1751, MSS. Advocates' Library, 28. 1. 7, i. 50.

[3] Mungo Campbell, his nephew, succeeded him as factor, and the Court directed General Churchill to "give the troops the necessary orders for supporting Mr. Campbell in the exercise of his duty." Minutes, 3d June 1752.

accessory to the crime. Against Allan Stewart the evidence was strong. James was suspected on various grounds. He had taken legal proceedings against the proposed evictions; he had been heard abusing Campbell; and several circumstances had been noticed soon after the murder which looked as if he had assisted Allan, who had at once gone abroad, to make his escape.

Criminal letters were raised against Allan and James Stewart, at the instance of the Lord Advocate and of Campbell's widow, with the Advocate's concurrence, accusing them of the murder. Allan was said to be the actual murderer, and James was said to have been accessory to the deed. The proceedings from the first were unfair. There was a standing feud between the Campbells and the Stewarts; yet the trial took place at Inveraray, where the Duke of Argyll was supreme. There were two judges of the Court of Justiciary present; but the Duke, then Justice-General of Scotland, sat as a judge, although he had never been in the habit of doing so. The Lord Advocate went to Inveraray and conducted the prosecution in person, although, it was said, no Lord Advocate had ever appeared in a Circuit Court before. Of the forty-five jurymen summoned to the Court, from whom the jury was to be chosen, twenty-five were Campbells.[1]

The Court met at Inveraray on the 21st of September. The Advocate and four juniors, two of whom were Campbells, prosecuted. The prisoner was defended by four counsel, two of whom rose to great distinction at the bar; George Brown of Coalston, who four years later became a judge, and Thomas Miller of Glenlee, afterwards Lord Advocate and President of the Court. The trial began with the usual debates on points of law, in the course of which the counsel for the defence did not hesitate to hint that the presence of

[1] State Trials, xix. 11.

the Justice-General was unusual. There had been a time, they said, when in Scotland a fair trial was unknown: "the best, the greatest of our country, even an Argyll, fell a sacrifice to the will of tyranny;" but now the administration of justice was, they hoped, in better hands. When one of Stewart's counsel was about to allude to the blameless character of the accused, the Duke interrupted him, saying that no man could have a blameless character who had been in rebellion against his King. To this the counsel answered: "It might be very difficult to say how many of the Argylls have been in rebellion against their kings."

In this preliminary debate the Lord Advocate spoke, and, in doing so, took occasion to explain his presence. "As it hath not," he said, "been frequently practised by my predecessors in office to attend in person at Circuit Courts of Justiciary, I beg leave to say a few words for myself, to give the reason of my being now here; and I am persuaded that every one who now hears me will believe me when I declare that, negatively, that hath not proceeded from any particular animosity against this unhappy man in the pannel, whom I never saw until this day when he appeared here; neither is it singly because it is a horrid and atrocious murder that is now to be tried; or that the trial is to proceed on indirect and circumstantial evidence, because such cases have often occurred. But the truth is, that upon my first hearing of this murder, in the month of May last, of a gentleman of this country, the King's factor upon certain of the forfeited estates that had been but a few weeks before annexed to the Crown unalienably, and the produce of them appropriated by law to the most salutary and beneficial purposes, for the future tranquillity of the United Kingdom in general, and for the immediate advantage and improvement of these highland parts of Scotland in particular, I was greatly shocked, and considered the murderers, whoever they were, as having been guilty,

not only of a most horrid crime against the laws of God and humanity, but, together with this, of a most audacious insult against the most gracious and beneficent acts of the King's Government, and of the whole legislature; and, as far as in them lay, had endeavoured to make the world or the public believe, that the civilising of the Highlands of Scotland was a vain and impracticable attempt; and under this impression I then resolved, whenever a discovery should be made of any persons concerned in this wickedness, to attend at the trial, wherever it should be, and to do all that in me lay, consistently with law and justice, to convince the disaffected part of the Highlands of Scotland, that they must submit to this government, which they have several times in vain endeavoured to subvert."

The case was sent to a jury. The jurors were chosen in accordance with the practice of Scottish Courts at that time. The judges picked fifteen men out of those who had been cited; and the prisoner had no peremptory challenge. Of the fifteen jurors chosen for the trial of Stewart, eleven were Campbells. The result of the evidence was that there were strong grounds for holding that Allan Stewart had shot Campbell; but it was not proved than James had been accessory to the crime. Throughout the examination of the witnesses the Duke showed a strong bias against the prisoner. But it was unnecessary; for the eleven Campbells, and probably the rest of the jury, had made up their minds. One of them, Campbell of South Hall, is said to have interrupted the prisoner's counsel by exclaiming, "Pray, sir, cut short; we have enough of it, and are quite tired!" Between seven and eight on the morning of Sunday the 24th of September the jury retired. The Court gave them till eleven on Monday morning to consider the case; but their verdict of guilty was agreed on four hours after the Court rose.

In passing sentence the Justice-General showed no compassion for the prisoner. In an angry tone and with abusive language he sentenced him to death. Stewart died protesting his innocence on the scaffold; and the common opinion in Scotland was that he had been unjustly condemned.

There can be little doubt that Stewart was sacrificed to political considerations. The Duke of Cumberland, fresh from the triumph of Culloden, had proclaimed that Scotland could be governed only by severity, and had done all in his power to discredit the policy of remedial legislation. The Opposition had denounced the Jurisdictions Act as revolutionary, and had predicted that the Forfeited Estates Act would be a failure. The credit of the Government, therefore, was at stake. Parliament had been persuaded to consent that the rents of the forfeited estates should be spent in bestowing benefits on the Highlands; and just seven weeks after the Act passed this brutal murder had taken place. Ministers were pledged to a policy of conciliation; and it was thought necessary to make an example which would prevent similar crimes in future, and deprive the Opposition of any excuse for demanding a return to the old policy of mere coercion. Therefore, in order to secure a conviction, Stewart was tried at Inveraray, where he was among his enemies, the Lord Advocate appeared in a Circuit Court to press a charge founded on insufficient evidence, a packed jury was put into the box, and the Duke of Argyll presided on the bench. These proceedings cannot be too strongly condemned; but except on this occasion, when he was acting under the pressure of a strong political motive, Grant's conduct as public prosecutor appears to have been fair and moderate.[1]

[1] The Highlands were not reduced to order for a long time. In November 1758, ten years after the abolition of the Heritable Jurisdictions, and six years after the passing of the Forfeited Estates Act, Lord George Beauclerk, then Commander-in-Chief of the Forces in Scotland, writes to the Barons of Exchequer with

Two years after the trial of Stewart there was a vacancy in the Court of Session; and in July 1754 Grant became a judge with the title of Lord Prestongrange. He was on the bench till his death, which took place on the 23d of May 1764. Lord Prestongrange had three daughters: Janet, who married the Earl of Hyndford; Agnes, who married Sir George Suttie of Balgonie, member of Parliament for Haddingtonshire; and Jane, who married Robert Dundas, son of the first Lord President Dundas of Arniston. In 1818 Sir James Suttie, the eldest son of Sir George Suttie and Agnes Grant, succeeded his aunt, the Countess of Hyndford, in the estate of Prestongrange, and took the name of Grant Suttie.

Grant's successor as Lord Advocate, in 1754, was his son-in-law, Robert Dundas of Arniston, whose father, after holding the offices of Solicitor-General, Lord Advocate, and

information regarding the condition of the forfeited estate of Locheil. Most of the tenants, he says, are thieves, and not only fail to assist Government in arresting outlaws, but harbour men who have deserted from the Highland Companies. "These deserters are themselves notorious thieves, who live chiefly upon prey in the mountains, and who have again and again rejected with contempt an offer of his Majesty's pardon upon condition of their returning into the Service. I therefore submit to your Lordships how far a set of people who, by protecting such villains, thus combine to obstruct as much as in their power the execution of the laws in Locharkaig (the most remarkable part in the Highlands for thieving) merit countenance from the Government, and whether the warning them to remove from their possessions would not only be the means of getting the present outstanding deserters to surrender themselves, but also tend greatly towards the suppression of theft in that part of the country, and likewise contribute towards making desertion less frequent for the future amongst the Highland Recruits, who no sooner abandon their corps than they become declared thieves through necessity, *as they can at no time live peaceably to get an honest livelihood in the Highlands;* and they seldom choose to leave that part of the country. I am far from being desirous that these tenants should at any time meet with harsh or severe usage. But as they are yet very wild and uncivilised, the making them sensible that the holding their leases from the Government must entirely depend on their good behaviour, would not only tend to their own happiness, but will be a blessing to the industrious part of the Highlands in general." Letters relating to the Forfeited Estates, MSS. Advocates' Library, 28. 1. 6, ii. 7.

President of the Court of Session, had died in the previous year.[1]

Dundas was born on the 18th of July 1713; was educated at Edinburgh, Utrecht, and Paris; and, on the 28th of February 1737 became a member of the bar. In the family of Arniston talent descended like an heirloom. His father, grandfather, and great-grandfather had all been judges. Had he been a dunce business would have come to him for some time after he was called. But he was a man of great ability. Aided to some extent by his family influence, but chiefly through his own exertions, he achieved an unexampled success; and on the 11th of August 1742, five years after he was called to the bar, he became Solicitor-General, at the early age of twenty-nine.

Craigie was then Lord Advocate, and Dundas had to spend much of his time in Edinburgh during the recess, while his superior in office was amusing himself at Glendoick. On these occasions he was in constant correspondence with Under-Secretary Mitchell, and did not hesitate to criticise the conduct and character of the Advocate. His letters give the impression that he had great industry, accuracy, and, above all, self-confidence. In one letter, writing of the Lord Advocate, he says: "Though I may not always be entirely satisfied with some things that happen, yet where a tolerable good reason is given me, as I am a young man in public business, I shall ever have that deference for my superiors not to blame too rashly, when I am satisfied that the designs, in the main, are right, and such as I wish them to be. And, as I agree with you in a strong regard for our friend, that I may term our First Minister here, I shall endeavour to improve any hints I receive to his advantage."[2] He thought the Lord Advocate

[1] 26th Aug. 1753; *supra*, vol. i. p. 318.

[2] Dundas to Mitchell, 23d Sept. 1742, Addl. MSS. British Museum, 6860.

was in the habit of speaking rashly. "I hope," he writes, "a little more practice, not in the law but among men, will make him more cautious." But he and Craigie worked together harmoniously, both before and during the difficult period of the Rebellion.

In January 1746, just before the crisis which led to the re-arrangement of the Pelham Ministry, Dundas resigned his office of Solicitor-General, giving as a reason the heavy nature of his duties. His resignation was at once accepted.[1] At the end of the year he was chosen Dean of the Faculty of Advocates, an office which he held for the next fourteen years.[2]

Although Dundas had been Solicitor-General, and must have known that he would, at some time, be Lord Advocate, he did not enter the House of Commons till 1754. At the general election of that year he was returned for Midlothian. The election was in April. In July, Lord Elchies, one of the judges, died. Grant took his place; and, on the 16th of August, Dundas succeeded Grant as Lord Advocate.

He was Lord Advocate for nearly six years; but during that period no event took place which was of great importance to Scotland. There was no very interesting debate in Parliament on any Scottish measure; nor is the name of Dundas associated with any great legislative achievement. Only one of his speeches is reported in the Parliamentary History. It was delivered, in December 1755, on Pulteney's motion for leave to bring in a bill "for the encouragement of seamen, and the more speedy and effectual manning the navy." In the debate it was asserted that in Scotland the press-gangs acted with undue zeal, and that new and extraordinary means were used to press men for the navy. Towns

[1] Dundas to Newcastle, 15th Jan. 1746; Newcastle to Dundas, 24th Jan. 1746, Scot. MSS. Record Office.

[2] Minutes of Faculty, 25th Nov. 1746.

and villages, it was said, were patrolled by soldiers with fixed bayonets, who searched the houses, while sentries stood at the doors to see that no one escaped. Even churches, according to one Scottish member, had been surrounded, and men had been seized as they came out from public worship. The Lord Advocate denied that anything illegal had taken place, and defended the employment of soldiers by drawing a dark picture of the mobs in Scotland. "They were employed," he said, "not to press, but to protect those who had a legal authority to press; and every one who knows anything of the nature of the people in that country must allow that it was absolutely necessary; . . . for the mob in that country do not content themselves with clubs and bludgeons, but possess themselves of as many fire-arms, and other mortal weapons, as they can possibly come at, and we know that our press-gangs are not furnished with arms proper for encountering such a mob; therefore, without the assistance of the military, no press-gang could have ventured to search for any seaman who was a favourite of the populace."[1]

This is the only report of any speech made by Dundas in the House of Commons. On the roll of the Lord Advocates he does not take a prominent place; but he became a great judge. On the death of Lord President Craigie, which took place in March 1760, he resigned the office of Lord Advocate, and was appointed head of the Court. He took his seat on the 14th of June 1760, and for the next twenty-seven years presided over the Supreme Court of Scotland with distinguished ability.

The most celebrated law-suit which came before the Court of Session during that long period was the famous Douglas Peerage Case. The public interest in this great litigation was intense. Every one knew the leading facts. Lady Jane,

[1] Parl. Hist. xv. 562.

sister of the Duke of Douglas, married, when she was forty-eight years old, Mr. John Stewart, afterwards Sir John Stewart of Grandtully. The marriage took place in 1746; and from that time till the end of the year 1749 the spouses lived abroad. It was said that in Paris, on the 10th of July 1748, Lady Jane gave birth to twin sons. In May 1753, about three years after Lady Jane and her husband returned to England, the younger boy died. In November of the same year Lady Jane died. In 1761, on the death of the last Duke of Douglas, Archibald Stewart, the survivor of the twins, was served heir to the deceased peer. The guardians of the Duke of Hamilton, then a minor, disputed Stewart's claim, on the ground that the story of his birth was a falsehood. He was the son, they said, not of Lady Jane Douglas, but of a certain Nicolas Mignon and Marie Guerin, his wife, from whom he had been obtained for fraudulent purposes by Lady Jane and her husband. The point to be decided was therefore simple: was or was not Archibald Stewart the son of Lady Jane Douglas? But the intricate nature of the facts, and the great stake which was at issue, surrounded the case with a halo of romance. The attention of the public was carried away to places and habits of life with which few were at that time familiar; to the forms of the Parliament of Paris, of which the people of Scotland knew less than they had known two hundred years before; to the diligences which traversed the highways of the Continent; to German lodging-houses; and to the homes of Parisian tradesmen. The interest in the case was increased by the consideration that it involved the character and position of high-born personages. "It is no less," said Lord Mansfield, "than an attack upon the virtue and honour of a lady of the first quality, in order to dispossess a young man of an eminent fortune, reduce him to beggary, strip him of his birthright, declare him an alien and a

foundling." Various points of law were raised, and difficult questions were discussed in the course of the proceedings. But the main question was one which all could understand. In society every one took a side. Ladies quarrelled over the Douglas Cause at their tea-tables, and gentlemen argued it warmly in the taverns. Thurlow, then commencing his great career, declaimed upon it over his punch at Nando's. Boswell wrote a pamphlet, "The Essence of the Douglas Cause," which he flattered himself influenced the judgments of Mansfield and Camden. The names of the witnesses and the places were on every one's lips. Nurse Garnier, Mistress Hewitt, Godefroi's, and Madame Le Brun's were as well known as Bergami, Majocchi, and the Grotto at the Villa d'Este were at the time of the Queen's Trial.

On Tuesday the 7th of July 1767 the Court of Session met to give judgment. Some of those who now sat on the bench had pleaded at the bar during the earlier stages of the case. One of these was Lord Gardenstone, who, as Francis Garden, had opposed Wedderburn before the Chambre Criminelle of the Parliament of Paris. Another was Lord Hailes, the learned historian. A third was Lord Justice-Clerk Miller, who, till just a year before, had been Lord Advocate and one of the senior counsel in the cause. Lord President Dundas spoke first. His opinion was that Archibald Stewart was not the son of Lady Jane Douglas. This opinion he explained and defended in a careful and exhaustive address, in the course of which he described Lady Jane's story as improbable and inconsistent. Towards the close of his speech he commented on the fact, much relied on by the defender, that both Sir John Stewart and Lady Jane had declared on their death-beds that their story was true. "The death-bed declarations in this cause do not move me," he said. "When crimes are committed, the committers rarely choose to confess, if by concealing they can

escape that infamy which otherwise would pursue them. Lady Jane could not but see, that, when the Rubicon was past, there was no retreating. Had she been tempted to have divulged a secret so important, the consequences would have been infamy on her own memory, and capital punishment on her associates. That in Sir John's judicial declaration many things are false cannot be denied. Between an oath and a declaration there is little difference; and yet Sir John upon his death-bed does not confess them; and though he makes a death-bed declaration, takes no notice of any of them."[1]

When the President had finished, his colleagues spoke in order of seniority. Six days were occupied by the judges in giving their opinions. When the last judgment had been delivered by Lord Monboddo, the President took the vote. The numbers were equal; seven judges voted on each side. The President's voice would, therefore, decide the case. "As this," he said, "is a cause of civil property, I think myself bound to give judgment according to my own opinion." The Court of Session had thus decided, by a majority of one, that the defender was not the son of Lady Jane Douglas.

The case was, of course, taken to the House of Lords on appeal. The feelings excited by the great cause were as keen as ever. Hundreds were turned away from the House of Lords while Wedderburn was making a speech which Fox declared was the best he had ever heard; and Thurlow fought a duel in Hyde Park with the Duke of Hamilton's agent. The interest increased daily till, on the 27th of February 1769, the Lords reversed the judgment of the Court of Session, and pronounced in favour of the appellant.

In Scotland the result of the appeal was awaited with

[1] Speeches in the Douglas Cause, p. 44.

feverish anxiety.[1] The moment judgment was given, Ilay Campbell, one of the junior counsel, posted off to Edinburgh. He arrived on the evening of the 2d of March, bringing the first intelligence of the decision. The news was received with enthusiasm. The city was illuminated, and bonfires were lighted in the streets. Next day the ships in the harbour of Leith displayed their colours, and a huge bonfire blazed on the top of Salisbury Crags. At Glasgow, Perth, and many other towns in Scotland there were rejoicings.

In Edinburgh the casting vote given by Lord President Dundas was not forgotten, and the mob attacked his house. But what took place is best explained in the following letter from the Lord Justice-Clerk to Lord Rochford:

"I thought it my duty," the Justice-Clerk wrote, "to inform you that last night, upon the arrival of an express from London giveing the accounts of the Judgement of the House of Lords in the appeal betwixt Mr. Douglas and Duke Hamilton, a mob *assembled upon* the Streets of the City, proclaimed Douglas for ever, and called for a general Illumination, which was accordingly Complyed with by most of the Inhabitants. They very early discovered a high Resentment ag^{t} the Judges who had given their opinion ag^{t} Mr. Douglas when the Cause was decided in the Court of Session; and as soon as their numbers were sufficiently large they proceeded to the House of my Lord President, broke most of his windows before and behind, endeavoured to beat open his door, and greatly alarmed his family. My house very soon after suffered the same fate, as did those of some of the other judges who were of the same opinion in that Cause. An attempt was made to break into Duke

[1] "We are sorry we have it not in our power to satisfy the anxiety of our readers with regard to the decision of the Douglas Cause, no account having yet arrived of that event." Caledonian Mercury, 1st March 1769.

Hamilton's Lodgeings in the Palace of Holyrood House, but was happily prevented by the soldiers upon guard. The rest of the night was spent in breaking the windows of those who were conceled[1] with Duke Hamilton in the Cause, or had not illuminated at the order of the mob.

"Upon going to the Court this morning, I was sorry to understand that the spirit of the mob was not allayed, that they had insulted my Lord President in comeing to the Court, and threatened to pull him out of his Chair, and were preparing for a second riot this night. I thought it my duty to send an express to General Oughton, the Commander in Chief, desireing his attendance in town to concert proper measures with the civil magistrats for preserving the publick peace, and that he would order in the few troops of dragoons that were quartered in the neighbourhood. This has accordingly been done, and the General is now in Town, and the best plan has been concerted that occurred to us for preserving the Peace of the City. In the meantime I hear the mob is up in different parts of the City, and calling out for a second illumination. I need not take notice of the dangerous tendency of a mob of this sort takeing Revenge against the King's judges for doeing what they thought their duty in a private cause. But I hope it may goe off without further violence."[2]

Another case, which was decided while Dundas was Lord President, may be briefly mentioned. Although it lies buried and forgotten among the reports, it excited much interest at the time. A negro slave, belonging to a Mr. Wedderburn, was brought by his master from Jamaica to Scotland. After living as a slave for some time without complaining, he declared that he was free, and that he intended to leave his master's service. Wedderburn arrested

[1] *Concerned?*

[2] Miller to Rochford, 3d March 1769, Scot. MSS. Record Office.

him; and the Justices of the Peace found "that he must continue as before." The negro appealed to the Sheriff of Perthshire, under whose jurisdiction the case fell. The Sheriff, holding "that the state of slavery is not recognised by the laws of this kingdom," gave judgment for the negro. Wedderburn appealed to the Court of Session. In England, not many years before, the principle that the slave who touches English soil is free had been affirmed by the judicial wisdom of Mansfield; and the conduct of the Scottish judges was, therefore, watched with interest. On both sides the case was ably debated. Henry Dundas, then Lord Advocate, led for the slave, and made a brilliant speech.[1] A majority of the Court approved of the Sheriff's judgment, and the slave was, accordingly, declared to be free. But a minority of four were of a different opinion. One of these was the Lord President, who had not been convinced by all the eloquence of his kinsman.[2]

Under Dundas the business of the Court of Session was conducted with great order. President Craigie had left heavy arrears, which were speedily wiped off by Dundas, and never allowed to accumulate again during his long judicial career.

On the 13th of December 1787 he died after a short illness; and, as a mark of respect for his conspicuous talents, he was honoured by a public funeral, which was attended by the Lord Provost and Magistrates of Edinburgh, the judges, the members of the bar, and the Professors of the University, all clad in their official robes.

When Dundas succeeded Craigie as President, in 1760,

[1] Boswell writes: "I cannot too highly praise the speech which Mr. Henry Dundas generously contributed to the cause of the *sooty stranger*."—Life of Johnson, chap. xxxv.

[2] Knight *v.* Wedderburn, 15th January 1778, Morison, Dictionary of Decisions, 14,545.

the office of Lord Advocate was bestowed on Thomas Miller, who had been Solicitor-General for the last two years.

Miller, the son of an Edinburgh lawyer, was born in 1717, and called to the bar on the 17th of July 1742. He had the good fortune to have an influential patron, the Earl of Selkirk, who, on the passing of the Heritable Jurisdictions Act, recommended him for the sheriffship of the Stewartry of Kirkcudbright. Lord Selkirk describes the qualifications of the future Lord Advocate in the following letter to the Duke of Newcastle: "I give you the trouble of this line to inform you that Mr. Thomas Miller, advocate in Edinburgh, is the name and designation of that gentleman whom I presumed to recommend for to be stewart Depute for the Stewartry of Kirkcudbright. He is a gentleman who, from his great integrity, abilities, and knowledge, is every way qualified and worthy of the trust. He is personally known to many of the Lords of Session, and to the most eminent of our lawyers, . . . all of whom can testify for his abilities and merit. He is of known affection for his Majesty's person, and the present establishment; of a firm Whig family; and himself educated, at the University of Glasgow, in all the honourable and genuine principles of liberty. My lord, I would not have taken upon me to recommend any person for an office, had I not conceived, that as this Jurisdiction Act will in its influence affect the property of every subject in Scotland, each person of property seems thereby to have some right to offer his advice, in the nomination of those who are to act where his property lieth."[1]

Miller received the appointment, which he held till 1755, when he was made Solicitor to the Excise.[2] In 1759 he became Solicitor-General for Scotland; and in 1760 he

[1] MSS. Record Office (Scotland, 1747).
[2] Brunton and Haig, 530.

succeeded Dundas as Lord Advocate. At the general election of the following year he was returned as member of Parliament for the Dumfries burghs.

The time at which he became Lord Advocate, and entered Parliament, was of some importance in the political history of Scotland; for it was then that Lord Bute, becoming First Lord of the Treasury in succession to the Duke of Newcastle, began that system of favouring Scotsmen which made Scotsmen so unpopular in London. On no one did the new Prime Minister bestow greater favours than on his own brother, James Stuart Mackenzie of Rosehaugh. He appointed him Keeper of the Privy Seal of Scotland, with a salary of three thousand a year; and for some time the Lord Privy Seal acted as Minister for Scotland. Nevertheless, the official correspondence of the time proves that, on all matters of importance, the advice of the Lord Advocate was taken.

As a law officer Miller was desired to give his opinion on the very important constitutional question of whether an appeal lay from the High Court of Justiciary in Scotland to the House of Lords. The point was raised in the following circumstances. In August 1765 Katharine Nairn, widow of Thomas Ogilvie, and Lieutenant Patrick Ogilvie, an officer in the 89th regiment, were tried for a crime of singular wickedness. In January 1765 Katharine Nairn, a young and handsome woman, had married one Thomas Ogilvie. Soon after the marriage an improper intimacy began between her and Patrick Ogilvie, her husband's brother; and, in June of the same year, Thomas Ogilvie died from the effects of poison, given to him by his wife at the instigation of her paramour. The guilty pair were arrested, tried on a charge of incest and murder, and convicted. Ogilvie was sentenced to death; but he presented a petition to his Majesty, praying for a respite pending the decision of an appeal to the House of Lords

against certain proceedings which had taken place at his trial.[1]

The question of whether an appeal lay from the Court of Justiciary to the House of Lords had been raised in previous cases; but it had never been brought to an issue. It was then usual to take the opinion of the Attorney-General, as well as that of the Lord Advocate, on points of Scottish law.[2] Ogilvie's appeal was laid before the Attorney-General; and, at the same time, the Duke of Grafton wrote to Lord Advocate Miller requesting his opinion on the subject. It was the middle of the recess, and Miller was in England with his wife and family. But on his return to Edinburgh he heard counsel in support of Lieutenant Ogilvie's right of appeal, examined the precedents, and prepared an elaborate report which he transmitted to London.[3]

Ogilvie's appeal reflected on the verdict of the jury. On this point the Lord Advocate says: "All I can say is, that the jury consisted of fifteen gentlemen, of the highest rank and character I ever saw upon any trial in that Court. The whole judges were present, and neither at that time, nor since, have I heard it suggested, that any of the judges entertained the least doubt of the justice of the verdict. As to myself, I attended the trial, from the beginning to the end, in my office as the Public Prosecutor, and the

[1] When Ogilvie was sentenced to death, the woman's counsel stated that she was pregnant. A jury of matrons, appointed to examine her, reported that they were unable to give a definite opinion on her state; and the Court adjourned the consideration of her case for some months. She subsequently gave birth to a child in the prison. As she was said to be too weak to appear in the Court of Justiciary, the judges went themselves, on an appointed day, to the prison to sentence her to death. But she had made her escape, and apparently was never captured.

[2] For instance, in 1767, a warrant for a poll election of magistrates for the Scottish burgh of Anstruther bears that, before granting it, his Majesty had received the opinion of the Attorney-General, the Lord Advocate, and the Solicitor-General for England.

[3] Lord Advocate Miller to Duke of Grafton, 23d Oct. 1765, Scot. MSS. Record Office.

evidence appeared to me entirely satisfactory; and no circumstances whatever appeared in the whole course of the trial, which did then, or do now, induce me to think that the jury has, in over strong measure, delivered their verdict." He then proceeds to deal with the question of law: Was an appeal competent from the Court of Justiciary to the House of Lords? His opinion, that no appeal was competent, was based on four grounds—first, no legal writer of authority alludes to any such appeal; secondly, the records of the Scottish Parliament and the Court of Justiciary show no traces of such an appeal; thirdly, the Claim of Rights, though maintaining the privilege of appeal against the decisions of the Court of Session, demands no appeal from the Court of Justiciary; and, lastly, no such appeal has ever been received by the House of Lords since the Union. This report and the opinion of the Attorney-General, which was to the same effect, were held conclusive by the Government; and Lieutenant Ogilvie was executed in terms of his sentence.[1]

In April 1766 Sir Gilbert Elliot of Minto, Lord Justice-Clerk, died; and Miller was appointed his successor. In this position he continued to correspond, as one of the

[1] Lord Advocate Miller received great praise for his report, which the Government regarded as a very able production.—Duke of Grafton to Lord Advocate, 7th Nov. 1765, Scot. MSS. Record Office. The report, which has never been published, is of great length, and goes minutely into the history of the law relating to appeals. It is now in the Record Office (MSS. Scotland, 1737–1770, No. 25). It will be observed that the House of Lords did not give judgment on the question. The Government took the opinion of the Lord Advocate and Attorney-General, and ordered Ogilvie to be executed. In 1773, however, the House of Lords rejected an appeal against a sentence of the Court of Justiciary on the ground "that the said petition and appeal is not properly brought."—H.M. Advocate *v.* Murdison and Miller; Hume, ii. 506; Maclaurin, No. 89. "The appeal in this case was (it is informed)," says Maclaurin, "dismissed upon the general principle that an appeal to the House of Peers, from a judgment of the Court of Justiciary, is in no case competent, without distinguishing whether the judgment had proceeded on the verdict of a jury or not." The latest decision in Scotland on the point is Mackintosh *v.* H.M. Advocate, where the House of Lords held that no appeal was competent. 23d March 1876.

Officers of State, with the authorities in London, who seem to have had a high opinion of his good sense and knowledge of Scottish affairs.

For nearly twenty-two years he was Justice-Clerk. In 1788 he succeeded Dundas as Lord President of the Court of Session, and was soon after made a baronet. But his health had been failing for some years. He had been compelled to live abroad during the winter and spring of 1782; and soon after he became Lord President his strength gave way. He died on the 27th of September 1789, at Barskimming, his country house in Ayrshire.

Sir Thomas Miller had long enjoyed a high reputation, not only as a lawyer, but as a leader in that brilliant company of learned men who, by their classic scholarship and literary tastes, adorned the bench of the Court of Session and the bar of Scotland during the first years of the reign of George the Third. In private life he was popular, both in town and country; and Burns, in "The Vision," thus speaks of him as he appeared in old age:

> "Through many a wild, romantic grove,
> Near many a hermit-fancied cove
> (Fit haunts for Friendship or for Love,
> In musing mood),
> An aged Judge, I saw him rove,
> Dispensing good."

When the Court met for the first time after his death, Sir David Dalrymple of Hailes pronounced a fitting eulogy on his character. "I am called upon," he said, "to intimate officially to your Lordships that Sir Thomas Miller, the President of this Court, is dead. Long did I know him, and well, and I could descant largely in his commendation. But sitting where I now do, I am not at liberty to speak aught which might have the appearance of the partialities of private friendship. This much, however, I must be allowed

to say, for in this your Lordships will add your united testimony to mine, that in the discharge of his duty, he was assiduous and patient, that he treated the bench with becoming respect, and the gentlemen at the bar with that civility which is their due."

Passing from the career of Sir Thomas Miller to that of his successor is like going from the heated atmosphere of a court-room or the library of a student into the fresh air of the country; for Sir James Montgomery was almost better known, in his own county, as a practical farmer than as a lawyer. He was the second of his family who had been devoted to agricultural pursuits. Early in last century, Alexander Hamilton, a macer of the Court of Session, was the owner of an estate in Peeblesshire called Coldcoat. In 1712 Coldcoat was sold, the purchaser being William Montgomery, an advocate who, coming to the bar with no fortune but his brains, had risen to a respectable rank in the profession. He claimed to be a cadet of the Ayrshire family of Montgomery of Macbie Hill, and changed the name of Coldcoat to Macbie Hill.[1]

At Macbie Hill, in October 1721, James, second son of William Montgomery, was born. He and his elder brother, William, were educated for some time at the parish school of Linton. On leaving school, they did as "Old Macbie," their father, had done before them, and went in search of fortune. William began life as an army contractor in Dublin, and lived to be a baronet and a member of the Irish Parliament. James studied the law, and was called to the bar of Scotland on the 19th of February 1743.

Four years after he came to the bar, when the Heritable Jurisdictions were abolished, he was the first Sheriff of

[1] Chambers, History of Peeblesshire, 498, 499.

Peeblesshire appointed under the new system; and in 1761, on the promotion of Solicitor-General Miller, the vacant office was given to him. His colleague as Solicitor-General was Francis Garden; and they applied for the privilege of sitting within the bar, a privilege which, it may be remembered, had been given, many years before, to Charles Erskine of Tinwald.[1] It appears that there were doubts whether two Solicitors-General could be admitted within the bar. Lord Bute consulted Lord President Dundas on the subject; and the following letters explain what took place:[2]—

"My Lord," Lord Bute wrote to the President, "application having been made, on the Part of Mr. James Montgomery and Mr. Francis Garden, who are at present joint Sollicitors for Scotland, desiring that a Seat may be placed for them within the Bar of your Court, where they may have Liberty to plead Causes, I must desire your Lordship to acquaint me, for the King's Information, whether you judge it consistent with the Forms and Proceedings of the said Court, that this Request should be granted, and how far such a favour is warranted by any former Precedents especially when the office of Sollicitor was not held by a single Person, but when it was in Commission, as is the Case at present."

The Lord President's answer was as follows:—

"I had the Honour of receiving by Mondays post your Lordships Letter desiring me to acquaint your Lordship, for His Majestie's Information, Whether a Request of the two joint Sollicitors to sitt and plead Causes within the Bar of the Court of Session is consistent with the forms and proceedings of the Court, and if this priviledge was ever given when the office was in Commission.

"That I might give your Lordship the more compleat

[1] *Supra*, p. 2.

[2] Bute to Dundas, 16th July 1761; Dundas to Bute, 23d July 1761, Scot. MSS. Record Office.

Information I have talked over the subject to almost all the judges, who agree with me in opinion, That this Request is contrary to a Statute in the 1537, in the Reign of James V. which Enacts that no Advocate nor Procurator shall stand to plead within the Bar, except the King's Advocate. It also appears from the Records of Court, that in these early times even the King's Advocate did not alwise enjoy this priviledge till the 1628 that it was granted to Sir Thomas Hope then Advocate.

"The Priviledge of sitting or pleading within the Bar was never given to any Soliciter-general till the 1725, that his then majesty K. George I. was pleased to give a sign manual for that purpose to Mr. Erskine then appointed Sollicitor. But it is my Duty to acquaint your Lordship, that I am well informed, when this sign manual was presented it was strongly objected too, particularly by Sir Hugh Dalrymple, then President of the Court, as contrary to the Act of Parliament, though he at last agreed not to insist on the Objection, and since that period the same Priviledge has been enjoyed by the Sollicitor-General. But I can with certainty assure your Lordship, this priviledge was never granted when the office was in Commission. Particularly in the 1746, Mr. Haldane and Mr. Home were named joint Sollicitors and continued in the office till the 1755, yet no step was ever taken to bring them within the Bar.

"I must further beg leave to suggest to your Lordship that (supposing the Act of Parliament out of the way) it is Humbly thought the admitting two Gentlemen to sit and plead within the Bar, would greatly embarras the external Form of the Court, as they would necessarily sitt where there are only six places, one of which undoubtedly belongs to His Majesty's Advocate; and the other five are the only seats for the Peers who frequently do attend the Court. Indeed as the Lawers are often obliged to move from their

seats in the Course of their Business before the judge who sits weekly in the Outter House, the admitting two joint Sollicitors would creat confusion and Disturbance within the Bar.

"Having thus endeavoured to obey your Lordships Commands in stating the Difficulties which attend the Request made by the joint Sollicitors, you will now permitt me (I may say in name of the Court) to express the just sense we have of your Lordship's goodness, and attention to the Court of Session, in thus enquiring into a true state of the Facts before your Lordship laid the matter before His majesty. I am confident, as we have all the same resolution of promoting His Majesties measures and of obeying His Royal Commands, we shall at all times be ready to state every matter in its true light, which your Lordship is pleased to desire from us." The request of the Solicitors-General was refused.

In 1763 Montgomery made a speculation in land. About thirty years before, the Earl of Islay had bought a large tract of waste ground, called Blair Bog, in Peeblesshire. The historian of that county, who speaks of Blair Bog as a "quagmire," says that the chance of reclaiming the place seemed hopeless. But Lord Islay set to work. He built a house; he drained; he planted trees; he turned a low-lying spot into a lake; and made other improvements. But so absurd and whimsical did the whole undertaking appear, even to himself, that he changed the name of the estate to The Whim. In 1761 he died; and two years after his death The Whim was put up to sale. Montgomery bought it, and continued the improvements, until it became his favourite place of abode.[1]

Soon after he bought The Whim Montgomery was appointed sole Solicitor-General for Scotland, his colleague having been elevated to the bench. When he presented his commission, the Court were of opinion that one of his

[1] Chambers, History of Peeblesshire, 508, 509.

privileges was to have a seat within the bar, which he was accordingly invited to take. In April 1766 he succeeded Lord Advocate Miller; and Henry Dundas, afterwards Viscount Melville, was, at the same time, made Solicitor-General.[1]

The removal of Lord Advocate Miller to the bench created a vacancy in the Dumfries burghs, and Montgomery was elected. He sat for these burghs until the general election of 1768, when he was returned for his native county of Peeblesshire, which he represented for the rest of his Parliamentary career.

Lord Advocate Montgomery was now a wealthy man. For many years his practice had been large. His habits were economical, and he had married an heiress. He spent his money on farming. His favourite amusements were those of a country gentleman, and his favourite study was the science of agriculture. The Whim was not enough to employ his energies; and he now made another purchase of land. A Peeblesshire laird, Sir David Murray of Stanhope and Stobo, had joined the Jacobites at the Rebellion of 1745. His life was spared; but his property was seized, and, by order of the Court of Exchequer, was put up to sale in the year 1767. Montgomery bought Stanhope and Stobo, the price paid being, it is said, about forty thousand pounds.[2]

After this he lived more than ever in the country. His arrival at Peebles was always welcome. "It is related by tradition," says the historian of the district, "that Mr. James Montgomery, when arriving from Edinburgh by this route, came thundering down the road from Venlaw to Peebles in his four-horse carriage." This road was, throughout the greater part of the way from Edinburgh to Peebles, so bad that a carriage could seldom go faster than three miles an hour. Montgomery succeeded in improving it; and the

[1] Scots Warrants, 28th April 1766.
[2] Chambers, History of Peeblesshire, 436, 437.

fact that he is entitled to the credit of the new road appears from the following entry in the Burgh Records of the county town: "1770, Oct. 10. Mr. James Montgomery, Lord Advocate, having pointed out the great advantage of having a proper road from Peebles to the border of Midlothian, in the direction of Edinburgh, a general subscription is entered into for the purpose of effecting this improvement by means of a turnpike act; in aid of which the burgh subscribes ten guineas."[1] This, and many other benefits which he bestowed on Peeblesshire, gained for him the title of "The Father of the County."

No Lord Advocate was ever better fitted to deal with the question of Entails than the lawyer who had acquired, among the fields of Peeblesshire, such a practical knowledge of agriculture. Many years had passed since Sir George Mackenzie's Statute of 1685. The custom of entailing lands had gradually taken deep root; and, during the eighty years which followed the passing of the Mackenzie Act, four hundred and eighty-five Deeds of Entail had been registered. The character of many of these is well known. The heir of entail could not grant leases for a period longer than his own life, or, in some cases, for more than two or three years; he could not settle a jointure on his wife, or make provision for his younger children; he could not exchange lands with a neighbour; he could not sell; he could not feu; he could not borrow, even in order to make the most useful improvements; if he ran in debt, the next heir could seize the property, and leave the creditors without money or redress. These, and a host of other fetters, might bind the heir of entail, and injure the estate of which he was, in name, possessed.[2]

[1] Chambers, History of Peeblesshire, 265.

[2] Between 1685 and 1848, when the Rutherford Act was passed, 2189 entails were registered in Scotland. Between 1848 and 1882, 701 entails and 540 dis-

Doubts, felt for a long time, were now expressed as to the wisdom of a system of strict entail; and it was soon evident that, among the landowning and farming classes, there were many who desired some relaxation of the absurd restrictions by which entailed estates were hampered. The subject was freely discussed. The sweeping changes which had been introduced by the statesmen who passed the Acts which had done so much to tranquillise Scotland since the Rebellion had shown how much good might be done by judicious legislation. The idea of progress, assisted by legislation, had become familiar to all classes in Scotland; and accordingly it was hoped that Parliament might be induced to modify the evils which flowed from the Statute of 1685. In 1764 the Faculty of Advocates had a meeting on the subject, at which a motion condemning the system of entails was carried by a majority of forty-three votes to four.[1] From the Parliament House the controversy spread to the country; and before long it was felt that something must be done.

When Montgomery became Lord Advocate, and entered Parliament, he was both able and willing to deal with the question. He looked at it from the standpoint of the practical farmer. The fact which chiefly impressed him was that entails discouraged improvements, by forbidding reasonably long leases, and, in most cases, preventing the outlay of money by the proprietor on enclosing, planting, draining, and building farm-houses, or even a mansion for his family. It was, therefore, with much satisfaction that he brought in a bill "to encourage the improvement of lands, tenements, and hereditaments, in Scotland, held under settlements of strict entail," which was read a first time on the 12th of March 1770. The bill was considered by a Select Com-

entails were registered. In 1882 there were 2350 entails in existence in Scotland. House of Lords Return, 1882, Parl. Papers (No. 154).

[1] Minutes of Faculty, 4th Aug. 1764.

mittee, and passed the Commons on the 9th of May. In the Upper House a number of amendments were made, but these were agreed to by the Commons.[1] The Act was then passed.[2]

The Montgomery Act gave the heir of entail power to grant leases for thirty-one years, or for fourteen years and an existing lifetime, or for two existing lifetimes. But this power was given on certain conditions. In leases for a fixed term of years one third of the land must be enclosed in one third of the term, two-thirds must be enclosed within two-thirds of the term, and the whole must be enclosed before the expiry of the lease. In leases for two lifetimes, a third must be enclosed in ten years, two-thirds in twenty, and the whole in thirty. It was provided that every lease for two lives, or for any term exceeding nineteen years, should bind the tenant to keep the fences in good repair till the end of the lease. It was put in the power of every proprietor of an entailed estate to grant leases of land for building houses or villages for any number of years up to ninety-nine. But no house or village might be built within three hundred yards of the mansion-house. To encourage the improvement of entailed estates by enclosing, planting, draining, and building farm-houses or offices, it was provided that the heir of entail in possession should have a good claim against the succeeding heirs of entail for three-fourths of any money laid out in this way. One section gave power to exchange lands in certain circumstances. Another allowed the owner of an entailed estate to build a suitable house, and charge three-fourths of the cost to his successor.

Such were the provisions of the Entail Act of 1770. A

[1] Commons' Journals, 19th May 1770. "*Ordered*, That the Lord Advocate of Scotland do carry the Bill to the Lords; and acquaint them that this House hath agreed to the Amendments made by their Lordships."

[2] 10 Geo. III. cap. 51.

number of interesting questions have arisen as to whether certain operations are or are not "Montgomery Improvements." Other Statutes have increased the powers of the possessors of entailed estates, so that nothing now remains but the ghost of the old system. The Montgomery Act did not produce so much good as was expected; yet it was one of the most useful measures passed during the long period of its author's life. Montgomery was a member of the House of Commons from May 1766 to June 1775; but, during the whole of that time, no speech of his is reported in the Parliamentary History. His work was done when he had passed an Act reforming that branch of the law in which he took most interest. He had no further ambition. A few years passed away. A keen politician, the ablest Scotsman of his day, was impatiently waiting to use the office of Lord Advocate as a stepping-stone to power and fame; and in June 1775 Montgomery, resigning his place to the eager grasp of Henry Dundas, retired into the dignified position of the Lord Chief Baron of Exchequer.

He spent the remainder of his life in attending to the improvement of Stobo, and the cultivation of the estate of Portmore, which he rented for the purpose of making experiments in permanent improvements. "Montgomery," says Lord Cockburn, an eye-witness of his closing years, "the author of the Entail Act which bears his name, was a most excellent and venerable old gentleman. He lived in Queensberry House in the Canongate, and I believe was the last gentleman who resided in that historical mansion, which, though now one of the asylums of destitution, was once the brilliant abode of rank and fashion and political intrigue. I wish the Canongate could be refreshed again by the habitual sight of the Lord Chief Baron's family and company, and the gorgeous carriage, and the tall and well-dressed figure, in the old style, of his Lordship himself."

In 1801 he resigned his judgeship, and received a baronetcy. He died on the 2d of April 1803, at the age of eighty-two, and was succeeded by his second son, Sir James, who was afterwards Lord Advocate, and member for Peeblesshire.

CHAPTER XIV.

HENRY DUNDAS.

In the last chapter it has been seen how, during the thirty years which followed the close of the Rebellion, Scotland, by the judicious policy of able statesmen, was gradually brought into a condition of peace and order. But it has also been seen how, during these years, there was no regular system for the management of Scottish affairs. We now come to another period, of almost exactly thirty years, during which the whole affairs of Scotland were controlled by one man, who, after serving for some time as Lord Advocate, in succession to Sir James Montgomery, rose by degrees to the rank of a Cabinet Minister, and was the bosom friend and trusty ally of the most powerful man in England. Henry Dundas was the foremost Scotsman of the eighteenth century. Opinions may differ as to the way in which, or the objects for which, he used his vast influence; but, while no Tory, who is not blinded by party sympathy, will deny that he had some faults, no Whig, who is not blinded by party prejudice, will deny that he had many virtues.

Robert Dundas of Arniston, who succeeded Duncan Forbes as Lord President in 1748, was twice married. That Robert Dundas whose career has been sketched in the last chapter was the son of his first marriage; the son of his second marriage, to Anne, daughter of Sir Robert Gordon of Invergordon, was Henry Dundas.

Henry Dundas was born in Edinburgh on the 28th of April 1742; was educated in his native city; and came to the bar of Scotland on the 26th of February 1763. He had not only the advantage of being the son of a well-known legal family, but his half-brother, Robert, was Lord President of the Court. This of itself was enough to make the writers eager to employ him; and he was soon in full practice. It is said that from the day he came to the bar he displayed, in a remarkable degree, those brilliant social qualities by which he was in after life so distinguished.

But it was not in the Court of Session that Dundas acquired the art of public speaking. He might have pleaded for years before his brother without finding an opportunity for any display of oratorical talent. It was in the General Assembly of the Church of Scotland that he learned to speak. This was the great school of oratory in Scotland. It had always been so. In most countries the struggle for liberty has taken place on embattled fields. It is otherwise with Scotland. In spite of occasional outbursts of intolerance, a great part of what is most glorious in her history is to be found in the annals of the Presbyterian Church. What Marathon was to Athens, what the Metaurus was to Rome, what Morgarten is to Switzerland, that the long fight of the Church against the Crown is to Scotland. Thus it was that the General Assembly had an importance in Scotland which no gathering of churchmen could ever have in England. It was a court in which grave constitutional questions had been discussed at the risk of life or liberty, and was invested with a dignity and interest which attracted to its debates all ranks and classes of the people. The Presbyteries were represented by laymen as well as clergymen; and the Assembly was thus open to members of the bar. Dundas was one of the many advocates who were members; and his success in the House of Commons was, to a great

extent, the result of the practice which he had in addressing the representative council of the Church of Scotland.

At the age of twenty-four, when he had only been three years at the bar, he was appointed Solicitor-General for Scotland.[1] At the general election of 1774 he was elected for the county of Midlothian; and henceforth he lived chiefly in London.

At any time life in London would have been attractive to Dundas. But there never was in London so much that was brilliant in society or exciting in politics, as during the period of Lord North's Administration. In Edinburgh there was a literary circle of which every Scotsman had good reason to be proud; and the social gatherings in the old houses were nearly as fashionable as ever. But in London everything was on a large scale; and there work and pleasure were combined in a way unknown to the austere society of the north. The memoirs and letters of that time are so graphic that we seem to enter at will the charmed circle, and to see the candles shining on the fine clothes of the men and the towering head-dresses of the ladies. The whole scene is depicted by the industrious writers of the day. Mrs. Montague's dinners, where the hostess, though nearly sixty, displayed to her guests the vivacity of half her years; the drawing-room with the picture of Pulteney over the chimney-piece; Mrs. Thrale, entering with her husband, and little thinking that a time would come when, by an act of folly, she would forfeit the esteem of all her friends; the beautiful Duchess of Devonshire drinking in the words of Johnson; Garrick and Horace Walpole, telling anecdotes or giving riddles; Frances Burney and her father, standing with Reynolds in the background, watching the scene with interest. The influence of this inner coterie of persons who

[1] The Lord President was directed by royal warrant to allow "Mr. Henry Dundas, his Majesty's Sole Solicitor in Scotland, to sit within the bar." 20th June 1766, Scottish warrants, 1765-1774, Record Office.

claimed to be the leaders of letters or of fashion was felt all over society. It created a spirit peculiar to that time, a gaiety and freedom from restraint which, though it often ran to excess, threw a glitter round public life, and fascinated all who came under its spell. It reached even the official society to which Dundas belonged when he entered Parliament; and in this brilliant world of political ambition and social pleasure he determined to take his place. He boldly made up his mind, not, indeed, to abandon the profession of the law, but to devote himself chiefly to politics and the House of Commons.

On the 20th of February 1775 he made his first speech, in the debate on Lord North's motion for attempting a reconciliation with America. He spoke like a Scotsman, with an accent so broad that the members present could not help smiling. But his figure was tall and manly; and his words, though spoken in a provincial dialect, were clear and forcible. He was, to say the least, independent. He alluded, we are told, "in very strong terms," to the inconsistency between the Prime Minister's motion and the address; and went on to declare that he "could never accede to any concession whatever, until the Americans did, in direct terms, acknowledge the supremacy of this country; much less could he consent to such concessions, while they were in arms against it."[1]

On the 6th of March he spoke again, on the bill for restricting the trade and commerce of the New England Colonies. Against this measure many petitions had been presented. Mr. Fox declared that it would do nothing but exasperate the Americans; and Lord John Cavendish said he was shocked at the readiness of Ministers to vote famine to a whole people. It was in answer to Lord John that Dundas spoke; and he went so far as to say that he was only afraid

[1] Parl. Hist. xviii. 332.

the bill would not produce famine among a people whose conduct deserved the severest military execution.

Soon after this Montgomery became Chief Baron of the Court of Exchequer; and, at the age of thirty-three, Dundas was appointed Lord Advocate, on the 24th of May 1775.[1] In July he presented his commission in the High Court of Justiciary.[2] For some time he appeared regularly as public prosecutor; but his attention was soon almost entirely devoted to politics.

At the commencement of next session of Parliament the Lord Advocate followed Mr. Fox in the debate on the address, and still maintained his attitude of "no surrender" on the American question. It would be ridiculous, he said, to listen to conciliatory measures while America was making so effectual a resistance. All Europe would say we had felt our inability to enforce our rights, and therefore were glad to accommodate matters on any terms; that when we had regained and re-established our authority there, he would be happy to join in any plan for the better and more happy government of that part of the empire. It was not uncommon, he said, for Great Britain to be unsuccessful in the beginning, and victorious in the progress and conclusion of her wars; and he was not at all dismayed by the gloomy pictures which some gentlemen were pleased to draw of our perilous and deplorable situation.[3]

Later in the session he spoke on Sir James Lowther's motion against employing foreign troops without the consent of Parliament.[4] On this occasion he said he would think a

[1] Regist. Magni Sigilli, Lib. xx. No. 93 (Paper Register).

[2] Minute Book of the Court of Justiciary, 20th July 1775.

[3] Parl. Hist. xviii. 775. "He concluded," says the reporter, "with an attack upon Opposition, which he executed with great good-humour."

[4] On the 25th of April 1776 Sir James Lowther moved, "That it is the opinion of this House that the introduction of foreign troops into any part of the dominions of the Crown of Great Britain, without the previous consent or approbation of the Parliament of Great Britain, is contrary to the principles of

Minister very blameworthy who did not, when the most important interests of his country were at stake, venture even to transgress the exact limits of the law.[1]

After this Dundas took part in most of the important party debates, and supported the measures of Government with an ability which pointed him out as destined for high office. His voice was deep-toned and distinct. His features were handsome, though "tinged with convivial purple."[2]

His rich Scottish accent, instead of prejudicing the House against him, was rather in his favour, as even the Opposition could not resist the merriment which he caused.[3] His manner was frank and gentlemanlike; he never made any attempt at eloquence. On one occasion Fox complimented him for speaking with "a flow of language and a strain of oratory rarely equalled;" but, as a rule, he confined himself to plain statements and broad assertions.[4] He was listened to with attention; and Mr. Burke declared that he always attended to what fell from the Lord Advocate, because it had the same effect on him as if, in a camp, he heard a signal-gun, which warned him of the approach of the enemy.

On one occasion Dundas was called to order for introducing the King's name into a debate. He lost his temper, or at least pretended to do so, and said he had been improperly called to order by the Chair. The Speaker again interrupted him, and told him he was out of

the Constitution, and not warranted by law." This motion was defeated by a majority of 61: Ayes, 88; Noes, 149. The Lord Advocate was one of the tellers for the Noes. Parl. Hist. xviii. 1335.

[1] Parl. Hist. xviii. 1332.

[2] Wraxall, ii. 221.

[3] His wit was sometimes very coarse. See his reply to Sir W. Meredith's speech on the army estimates, in Dec. 1779. Parl. Hist. xx. 1254.

[4] Fox was not always so complimentary. "Mr. Fox," says Lord Holland, "used to say that he (Dundas) never failed to speak with effect unless when, by some strange fatality, he happened thoroughly to understand the subject on which he spoke, and then he was long, dull, and tedious beyond all sufferance." Memoirs of the Whig Party, i. 242.

order. Dundas retorted by declaring that he did not care for the opinion of any man; but he was forced to resume his seat, after being repeatedly called to order by the House.[1]

Throughout the whole of the debates on the momentous question of the relations between Great Britain and America, Dundas, who frequently spoke, surpassed every other member of the Tory party in his determined opposition to all plans for effecting a reconciliation with the colonists. But his extreme independence brought him under the censure of the King, who had, in 1777, appointed him Joint Keeper of the Signet for Scotland, and who, therefore, thought him very ungrateful. When Lord North introduced his two conciliatory bills in the winter of 1778, Mr. Powys moved to insert a clause repealing the Massachusetts Charter. Dundas spoke in support of this amendment against the Government. The King was indignant. "The more I think," he wrote to Lord North, "of the conduct of the Advocate of Scotland, the more I am incensed against him. More favours have been heaped on the shoulders of that man than ever were bestowed on any Scotch lawyer; and he seems studiously to embrace every opportunity to create difficulty. But men of Tallents, when not accompanied with Integrity, are Pests instead of Blessings to Society, and true wisdom ought to crush them rather than nourish them."[2]

Before long, however, his Majesty began to see that the Lord Advocate might be of use as a debater; and, in the spring of 1779, he actually expressed the hope that Dundas would always be in his place, ready to confront the Opposition. "Let the Lord Advocate," he said, "be gained to

[1] "Mr. Dundas was again proceeding to controvert the opinion given by the Chair, but was compelled to sit down amidst a storm of disapprobation." Parl. Hist. xx. 872.

[2] Brougham's Statesmen of the Time of George III., 106.

attend the whole Session, and *brave the Parliament*, but not for filling employments."[1]

For some years England had been in a state of constant agitation. Though Government had a large majority in Parliament, the English constituencies returned a sufficient number of Whigs to make the Opposition, as a rule, troublesome to Ministers. In Scotland it was quite different. The elections always went in favour of Government. There was no popular representation in Scotland. The franchise was in the hands of a few persons. The burgh members were elected by the town-councils, and the county members by a small number of freeholders. Yet it cannot be said that Scotland was misrepresented.[2] A profound apathy was spread over all classes. There was no public opinion; the people were perfectly indifferent; the franchise was valued chiefly as a marketable possession; and the acquisition of a vote was looked on as a sound investment, for which a return was to be obtained. But suddenly the country abandoned this indifferent attitude, and took, on one particular question, a violent interest in the policy of the Government; and a crisis arose which called forth all the tact and common sense of Dundas.

Early in May 1778 a petition was presented to the King, by the Earl of Surrey, from the Roman Catholics of the United Kingdom. The petitioners assured his Majesty that their dissent from the Established Church was purely conscientious, and begged admission to the benefits of the Constitution. Soon after this Sir George Saville brought in a bill to repeal the Acts of which the Roman Catholics complained. These Statutes had been passed before the Union, and did not, therefore, apply to Scotland. But the Scottish Parliament had passed enactments of a similar

[1] George III. to Lord North, 21st April 1779.
[2] Cockburn's Memorials of His Time.

import; and the Lord Advocate gave notice that he would bring in a bill to repeal them.[1]

Sir George Saville's bill passed both Houses of Parliament, and became law, without opposition; and an English Roman Catholic could now purchase lands and feel secure in his rights of inheritance.

In Scotland the Lord Advocate's statement, that he was prepared to repeal the penal laws against the Papists, was heard with various feelings. In the General Assembly of the Church of Scotland a motion against the proposed change was defeated by a large majority.[2] But the opponents of the proposed toleration were not to be baffled. An agitation was begun; and the Society for the Propagation of Christian Knowledge circulated a pamphlet on the subject, in which the Lord Advocate's proposal was attacked. An association was formed, under the name of the Friends of the Protestant Interest. A public meeting, which was largely attended, was held; and a declaration of the views and objects of the association was published in the newspapers.[3] This declaration appealed to all the bigotry and intolerance in Scotland. It openly opposed granting to Roman Catholics "the same civil privileges with Protestant subjects of purchasing and succeeding to landed property." It declared that no species of toleration should be extended either to priests or to Roman Catholic laymen; and it called upon all public bodies to address a remonstrance to the King and Parliament. A "Committee of Correspondence," of which the crazy Lord George Gordon was afterwards a member, was appointed to communicate with all parts of Scotland and England. A solicitor was appointed to attend to the interests of the

[1] Parl. Hist. xix. 1142. [2] 118 to 24.

[3] "Scotland's Opposition to the Popish Bill; A Collection of All the Declarations and Resolutions against a Proposed Repeal of the Statutes, enacted and for ever ratified by the Revolution and Union Parliament for Preventing the Growth of Popery." (Edin. 1780.)

Association in London. Blank forms of petitions were sent through the country. Money was eagerly received from all who would give it. Every means was taken to inflame the hatred of the mob against a small but respectable class of citizens. The people of Scotland, cautious in matters of trade, are easily made reckless and headstrong in matters of religion. It was in vain to point out that the principles which condemned the Roman Catholics to penalties, would, if logically applied, condemn all Scottish Episcopalians and all nonconformist Presbyterians. The old fear of Popery had become groundless; and a baser sentiment, the hatred of Papists themselves, had taken its place.

The result of this conspiracy to defeat a policy on which politicians of all parties in Parliament were agreed was that, from December 1778 to February 1779, a great number of declarations against toleration were made by town-councils and other public bodies in Scotland. Glasgow, Perth, Dundee, Kilmarnock, and many other places, adopted resolutions in favour of opposing any relaxation of the laws against the Roman Catholics.

In Edinburgh there was a riot. On the evening of the 29th of January 1779, the opponents of the bill scattered in the streets a circular in these terms: "Men and brethren, whoever shall find this letter, will take it as a warning to meet at Leith Wynd, on Wednesday next, in the evening, to pull down that pillar of Popery lately erected there.—A Protestant. P.S.—Please to read this carefully, keep it clean, and drop it somewhere else."[1] This notice was read by thousands, all of whom knew that the "pillar of Popery" meant a Roman Catholic place of worship in Leith Wynd. On the evening of the 2d of February the mob assembled. There was a house in Chalmers' Close, part of which was inhabited by a priest. In front of this house the crowd gathered.

[1] Annual Register, 1779, Chronicle, 197.

The windows were broken; the house was entered; the furniture was destroyed; and at last the building was set on fire, and its contents burned to ashes.[1] On the following day the rioting continued, and the Roman Catholic Chapel in Leith Wynd was attacked and destroyed. The private houses of Roman Catholics and citizens who were supposed to favour the bill were also attacked. The magistrates were powerless. Dragoons were sent for; and the soldiers arrived just in time to save the house of Principal Robertson, the historian, which the mob had declared it was their intention to destroy, because he was in favour of the principles of toleration. The magistrates of Edinburgh took the strong step of assuring the mob, without the authority of Government, that the bill would not be brought into Parliament, and by this means succeeded in putting an end to the riot.[2]

The attention of Parliament was, as a matter of course, directed to what had taken place. The session had begun on the 28th of November 1778; but Dundas was not in his place till the 15th of March 1779. On that day Mr. Wilkes questioned him as to his intentions with regard to the bill in favour of the Roman Catholics. "I am glad," said the member for Middlesex, "to see in his place the first law officer of the Crown for Scotland. I have a real respect for his very superior abilities, and am always charmed with his manly eloquence." He then asked the Lord Advocate

[1] Annual Register, 1779, Chronicle, 197.

[2] On the 25th of January Lord Justice-Clerk Miller had written to Government, saying that he thought the Roman Catholics of Scotland were as deserving as those of England, but that the bill would be most dangerous. "I have wrote this letter," he said, "after repeated conversations with my Lord Advocate, and, knowing his resolution to write to the same purpose to my Lord North, I have unbosomed myself to your Lordship upon this interesting subject, and I am humbly of opinion that it is highly inexpedient to bring this bill for repealing the Acts of the Parliament of Scotland against Papists into Parliament, and if it is forced into the House, the sooner it is quashed the better." Lord Justice-Clerk to Lord Suffolk, 25th Jan. 1779, Scot. MSS. Record Office.

if he intended to fulfil his promise to bring in a bill for the relief of the Roman Catholics in Scotland.

Dundas replied that there was the most violent opposition to the measure in Scotland, that he had tried to reconcile the people to it, but finding it in vain he had consulted the principal Roman Catholics. They had expressed the opinion that it would be much better to abandon all attempts to procure an Act in their favour till time and cool persuasion should remove the unhappy prejudices of the Protestants of that country against them.[1] Wilkes thereupon declared that the honour of the House, which had been pledged to the Roman Catholics, had been meanly sacrificed to the populace of Scotland, and contrasted the conduct of the Lord Advocate with that of the Attorney-General, who had instituted prosecutions for riots of a trifling description, which had taken place in England. "When I am informed," he said, "that the peaceable and loyal Roman Catholics of Scotland find no security, even in the capital, for their lives and property, I do not hesitate to say that there is a dissolution of Government."[2]

The feeling of the House was that the Penal Acts should be repealed without delay, and that vigorous measures should be taken to crush an agitation, which, in the unanimous opinion of Parliament, was the result of sectarian hatred. On the 18th of March Burke presented a petition from the Roman Catholics of Glasgow, telling how they had been treated, and asking for protection. They had already informed the Lord Advocate that they were willing to withdraw, in the meantime, their claims for a repeal of the penal laws. All they now wanted was protection for their lives and property. Burke moved that the petition be referred to a Select Committee, and condemned the indifference of Government to the proceedings of the Scottish

[1] Parl. Hist. xx. 280. [2] *Ibid.* 282.

agitators. He said he hoped the Government was not dead, but only asleep. "Brother Lazarus," he added, looking across the table at Lord North, who was slumbering peacefully, "is not dead, but sleepeth." The Minister was wakened by shouts of laughter from both sides of the House.[1]

Though the First Lord of the Treasury was asleep during this debate, Lord Advocate Dundas was wide awake to all that was going on in Scotland. He had informed the Ministry that steps would be taken to give compensation to those Roman Catholics who had suffered during the riots, and had advised the abandonment, for a time, of the Relief Bill. Fox and the English Whigs would have insisted on passing the bill, in spite of "little insurrections in a small corner of the empire." Dundas was too prudent to agree to this. He knew the bigotry and intolerance of his countrymen on this subject. He knew that, though the people of Scotland had long acquiesced in the whole policy of the Government, his influence would disappear, like mist from the Grampians, if the religious passions of the nation were roused against him. The favoured few who had the franchise might not waver in their allegiance to the Tory party; but he could not doubt that to pass the Relief Bill, after what had been said in the Presbyteries and done in the towns of Scotland, would be to strike the death-blow of the system by which the people had been governed for some time. The Government took his advice; and the petition of the Roman Catholics was allowed to lie on the table.[2]

It remained for the Church to complete the triumph of intolerance. In May 1779, after this year of turmoil, the General Assembly again met. As the bill had been withdrawn, the debate which took place on the subject was deprived of all practical interest. But a very different

[1] Parl. Hist. xx. 327. [2] 18th March 1779.

resolution from that of May 1778 was carried. Although declaring their adherence to the principles of civil and religious freedom, the members of Assembly recorded "their firm persuasion that a repeal of the laws now in force against Papists would be highly inexpedient, dangerous, and prejudicial to the best interests of religion and civil society in this part of the United Kingdom."

The outbreak of war against France and Spain gave Dundas an opportunity of displaying his activity in the management of Scottish affairs. The combined fleets of the enemy hovered along the English coast; and for a time it was feared that the naval supremacy of Britain was at an end. In Scotland there were constant rumours that foreign troops would be landed. Once, indeed, the people of Edinburgh believed that there was to be fighting in their own streets. It was thought that an invasion was imminent. Some ships of war were seen off the coast near Dunbar. It was reported that they were coming up the Forth. The tradesmen of Leith were alarmed for the safety of a fleet of their merchantmen, which was expected from the Baltic; and a sloop of war was despatched to intercept them, and give warning of the presence of the enemy. The townsmen sent their wives and children inland, and prepared to defend the port. The magistrates of Leith enrolled five hundred old soldiers to assist in the defence. All along the Firth of Forth the warlike spirit spread. In every fishing village the men volunteered for service; and the gentlemen of Fife and East Lothian offered to lead their tenants and servants if a landing was attempted. But after cruising about for some days the enemy sailed to the south.

Dundas availed himself of the general enthusiasm to take steps for the purpose of enabling the officers in command of the press-gangs to procure a greater number of men in Scotland. Hitherto, what was known as the "Impress Service" in Scotland had been conducted solely by the naval

department, without any assistance from the civil authorities. The result was that seamen avoided the press-gangs by going inland. Dundas resolved to overcome this difficulty and render the Impress Service powerful all over the country. He accordingly induced the Boards of Customs and Excise to direct their servants to give information to the press-gangs; and, in order to secure the assistance of persons of influence throughout the country, he wrote a letter to the Sheriff of every county, requesting him to call the heritors together, and "to state to them the high importance of their zeal and activity in the present moment." "In doing so," said the Lord Advocate, "you will not fail to remind them that the present confederacy of the Crowns of France and Spain can only be disappointed by the ardent exertions of every individual to contribute what is in his power for the defence and safety of the country. The demand for an immediate supply of seamen is most peculiarly urgent, and therefore if there are any seafaring men lurking in any part of the country who do not, on such an emergency, make voluntary offer of their service, I trust every individual will think it his duty to give information and all possible assistance to those employed in the Impress Service, in order that every person bred to the sea may be compelled to give his services on board the fleet at this interesting conjuncture." The counties responded to this appeal by holding meetings and resolving to support Government in the manner suggested. Encouraged by the way in which his letter to the Sheriffs was received, the Lord Advocate next wrote to the magistrates of every burgh in Scotland, suggesting that they might offer bounties to seamen, and assist, in other ways, the enlistment of men for the navy. The burghs followed the example of the counties in a way which proved of great service to the Government.[1]

[1] Scot. MSS. Record Office, 1779, 1780.

During the discussions on Mr. Burke's plan of economical reform the question of the Pension List was raised. Mr. Burke did not propose to take away, or even to burden, the pensions which had already been granted; but many of the Opposition were anxious to see laid before Parliament the names of all who enjoyed pensions or held patent places. On the 15th February 1780 Sir George Saville moved that a list of all those who held such places, and their salaries, should be produced. In the debate which followed the number of pensions and places bestowed on the supporters of Government in Scotland was attacked. Fox declared that it cost the nation as much to keep the Scots in good-humour as it had cost to crush the Rebellion. Dundas, and Wedderburn, then Attorney-General, were among the foremost opponents of the motion. This brought up Colonel Barré, who made a personal attack on them. Dundas, he said, held a sinecure in Scotland, and Wedderburn was scheming for the Lord-Chancellorship. Dundas did not take any notice of this attack. Wedderburn, however, rose the moment Colonel Barré sat down, and said he hoped the House would excuse Colonel Barré, because it was his constant custom "to be personal against me whenever he finds himself disposed to speak." "That is false!" shouted Barré. Wedderburn sprang to his feet in anger, but could not be heard amid the uproar which followed Colonel Barré's exclamation. The Speaker interfered, and Barré was induced to explain that he meant nothing personal. The House divided, and Saville's motion was rejected by a majority of two.[1]

The discussions on the Economical Reform continued. The Opposition was supported by the country; and petitions in favour of reform covered the table of the Commons. On the 6th of April a public meeting was held in Westminster.

[1] Parl. Hist. xxi. 83-104.

Fox was in the chair. The Duke of Devonshire and the Duke of Portland sat beside him; and a large audience cheered Fox as he attacked Ministers, and commented on the growing influence of the Crown.

That afternoon in committee Mr. Dunning moved his famous resolutions; first, "that the influence of the Crown has increased, is increasing, and ought to be diminished;" secondly, "that it is competent to the House to examine into, and to correct, abuses in the expenditure of the civil list revenues, as well as in every other branch of the public revenue, whenever it shall appear expedient to the wisdom of this House so to do." The debate was conducted in the midst of furious excitement. Sir Fletcher Norton, the Speaker, attacked Lord North, and declared that, in his opinion, the influence of the Crown had increased much beyond the idea of a monarchy strictly limited in its nature and extent.[1] Dundas, who, the reporter tells us, spoke "in a strain of strong irony" of the respect due to the opinion of Norton, tried to end the debate by moving that the Chairman leave the chair. In deference to the evident feeling of the House, he withdrew this motion, and moved as an amendment that there should be added to the motion the words, "That it is now necessary to declare." The Lord Advocate evidently saw that the debate was going against the Government, and that the previous question could not be carried. He therefore wished to prolong the discussion in the hope that something might be gained by delay. But Fox instantly rose and said he agreed to the amendment. At midnight the House divided, when Dunning's motion was carried by a majority of eighteen votes. Dundas voted with Lord North, in the minority, and was followed into the lobby by twenty-seven Scottish members. Five Scottish members voted against the Government. The

[1] Parl. Hist. xxi. 357, 358.

second of Mr. Dunning's resolutions was then agreed to without a division.

Lord Advocate Dundas's position in the House was now assured. He spoke nearly as often as either Fox or Burke, and oftener than any other member of the Government except the Prime Minister. He was, in fact, very nearly the most prominent figure on the right hand of the Speaker. He always professed a strong admiration for Lord North. But at the beginning of the year 1781 it became evident that the Government was losing ground, and the Lord Advocate, watching the signs of the times with a keen eye, began to suspect that it would be impossible to follow Lord North much longer.

The Treasury bench was weakened by the promotion to the Upper House of Thurlow and Wedderburn. At the same time the Opposition was stronger than ever. Fox, Burke, Sheridan, Barré, and Dunning were a host in themselves; and the Whigs received a new recruit in the person of one who for many years after had no more trusted friend than Dundas. This was William Pitt, who took his seat on the 23d of January 1781.

Mr. Pitt's first speech was made on the 26th of February, when he supported the Opposition bill for the regulation of the Civil List establishments. The story of his success, and of the congratulations which he received, is a part of history. Dundas spoke toward the close of the debate, but is not reported to have made any allusion to the young orator.

On the 12th of June Pitt spoke again. On that night Fox moved for a Committee on the American war. Pitt conceived that Lord Chatham's views had been misrepresented, and made an eloquent speech on the subject. He sat down amidst loud applause. Dundas rose to reply. His speech was singularly adroit. In Pitt he saw the coming man; and his mind was made up that to Pitt he

must, sooner or later, attach himself. He therefore declared that he always held independent opinions, and asserted that he had entered the House "as an unprejudiced, unconnected man, without any more predilection for Ministers than for their opponents." He had formed his own opinions on the proper policy to be pursued towards the Americans, and he was not ashamed of them. He had had occasion to differ from the views of the Prime Minister, and he had been candid on the subject. He now agreed with him, and differed from Mr. Pitt. "Mr. Pitt," he said, "diametrically differed upon this subject from his noble relation, for he well recollected that that great man, the very day he felt the stroke of death, bursting with indignation at the very idea of declaring America independent, poured out his exhausted vitals in denouncing those Ministers who would dare to parcel out or vote away the British empire."[1]

He then went on to speak of Chatham in terms of glowing eulogy, and, warming with his subject, at length declared that the best advice he could give to his noble friend, Lord North, "if he ever expected to arrive at the character of a great Minister," was to study the career of Chatham. To Pitt himself the Lord Advocate paid an elaborate compliment. "I find myself," he said, "impelled to rejoice in the good fortune of this country and my fellow-subjects, who are destined in some future day to derive the most important services from so happy a union of first-rate abilities, high integrity, and bold and honest independency of conduct, and the most persuasive eloquence." Fox, in his reply, laughed at the Lord Advocate's professions of independence. "I am well persuaded," he said, "of the learned Lord's great abilities; I am equally convinced of his integrity, and give me leave to say that I am generally astonished at the

[1] Parl. Hist. xxii. 496.

correctness of his memory. But great as his talents confessedly are, unshaken as his integrity, and wonderful as his memory may be, I must doubt of the truth of the history the learned Lord has given of his own political life, his steadiness, and his other public virtues, in the shape in which he has thought fit to bring them forward."

Soon after this Dundas crossed swords with Fox in a debate on the treatment of the American prisoners. Fox declared that his opinion of the American cause had all along been that it was the cause of freedom, the cause of the Constitution, the cause of Whiggism, and that he had in its origin sincerely wished it success, and ended by accusing the Government of caring for nothing but revenge. Dundas replied that he was not surprised that the honourable gentleman rejoiced at the successes of the enemy, to which he had not a little contributed by his language and conduct in the House. He was called to order for speaking more than once; and the matter dropped after a long wrangle. A fortnight later the session closed.

Parliament met again on the 27th of November, and on the following day Dundas spoke in the debate on the Address.

Pitt had spoken, and, in eloquent terms, demanded from the Government some definite statement of their American policy. When the applause which followed the conclusion of his speech had died away, there was a pause. All eyes were turned towards the Treasury bench, and it was expected that the Prime Minister would rise.[1] He remained seated; and the Lord Advocate got up. He began by speaking of the "lustre of abilities" and the "splendour of eloquence" displayed by Pitt, whose speech, he said, had proved that great talents had descended from a gifted father to a gifted son.[2] He then made a speech which was listened

[1] Wraxall, ii. 448.

[2] Parl. Hist. xxii. 735.

to with great surprise. His words seemed to imply that there was disunion in the Cabinet. The Opposition had pressed the Government to say whether the war in America was to go on; and the Lord Advocate said that the Government would soon have to answer this question. The Opposition had accused Lord North of carrying on the war against his own judgment; and the Lord Advocate said, in general terms, "that the Minister who would sacrifice his opinion to preserve his situation was unfit for society." Fox pressed the Advocate to be more explicit, to say whom he blamed, and whether the war was to be prosecuted. To this Dundas merely replied that he did not mean to blame Lord North, and that the policy of the Government would be disclosed when the vote for the army came on.[1]

The army estimates were soon before the House; and on the 12th of December Sir James Lowther moved a resolution to the effect that the war in America had proved ineffectual.[2]

A few days before this Mr. Fox had privately asked the Lord Advocate whether the Government really would speak out. According to Horace Walpole, Dundas replied, "I believe not, but do press them."[3] Fox did press them, but Lord North would not say in definite terms what were the precise intentions of Government. Dundas himself was called on by Fox, a few days later, to explain the intentions of the Ministry. "If the learned Lord," said Fox, "desires to acquire the credit which is due to openness, if he wishes for anything more than the affectation of independence, he must now come forward and realise his assurances." Dundas retorted by saying that Fox seemed to be very anxious about his character, that he was able to take care of it himself, and that if others looked to theirs they would have enough upon

[1] Parl. Hist. xxii. 735-745; Memorials and Correspondence of Fox, i. 269.
[2] Parl. Hist. xxii. 802. [3] Memorials and Correspondence of Fox, i. 270.

their hands. At the same time he said he was convinced that the Cabinet not only meant to discontinue, but had deprived itself of the power of continuing, the war.[1]

Amid these symptoms of weakness and disunion among Ministers, Parliament adjourned for Christmas.

When Parliament met again the Opposition was as strong as ever; and in all the fierce party battles which raged during the last weeks of Lord North's Administration Dundas was prominent. Day by day it became clearer that the general sense of the House of Commons was against the continuation of the American war.[2] In prolonging the struggle so far Lord North was playing into the hands of the Opposition, and giving opportunities of pointing to the enormous cost of the war loan, and to the fact that the policy of Ministers had driven the country into a European war. These damaging facts were the basis of a series of resolutions of censure on the Government which were moved, on the 8th of March 1782, by Lord John Cavendish.[3]

In the course of this debate an amusing passage of arms took place between Dundas and Burke. Mr. Ellis, who had recently exchanged the office of Treasurer to the Navy for that of "American Secretary," was said, by an Opposition speaker, "to be so drenched in the lees of ministerial complacency that all the starch and buckram of his character was gone." He defended himself by saying that he had given up a lucrative appointment, without responsibility, and

[1] Parl. Hist. xxii. 852.

[2] Lord John Russell, writing in 1853, says: "The events of the year 1777 and 1778 ought to have put an end to the American war. A British army had surrendered. Three millions of people, at a distance of ten weeks' voyage, in possession of a great continent, had declared their independence. There was no longer anything to be gained by our arms in America if her independence was to be acknowledged. A simple cessation of arms must have speedily led to a treaty of peace with the new State. The Opposition, which had caught eagerly at the first overtures of Lord North, would have been silenced by the complete fulfilment of their declared policy." Memorials and Correspondence of Fox, i. 201.

[3] Parl. Hist. xxii. 1114-1118.

had taken a post of danger, and that before accepting office he had a warm comfortable bed, from which he had stepped into the ship of state in the midst of storm and tempest. Burke, who followed Ellis, ridiculed this simile, and exclaimed,

> "It is not for your health thus to commit
> Your weak condition to the raw cold morning!"

He then proceeded to say, "The honourable Secretary has declared that he quitted his flannel night-cap and his warm bed for a post of danger; in my firm belief the bed was left merely for the purpose of introducing a Scotch warming-pan. That is the chief cause of the new Secretary's being created."[1] When Dundas spoke, he denied that the Secretaryship had been created in order to make way for him, and then went on to say, "The honourable member has been pleased to laugh at the right honourable gentleman, and to talk of his having quitted his warm snug bed in order to make room for a Scotch warming-pan. Now, I see no reason, looking at the gentleman opposite, why it should not be an Irish warming-pan that was to be put into that bed instead of a Scotch one."[2]

In this debate Mr. Fox had stated that the two leading points on which he differed from the Ministry were the prosecution of the American war and the influence of the Crown, and that it was a mistake to suppose that the Opposition wished to form "an Administration of proscription." They wished, on the contrary, to see a Ministry formed on a broad basis. Dundas asked what was meant by a Ministry "on a broad basis"? Fox explained that they would proscribe no men of any party but the five or six men who had recently been the confidential advisers of the Crown; and, to explain his meaning, he said that they would not proscribe even the learned Lord Advocate "although they had abhorred his notions of the Constitution."[3]

[1] Parl. Hist. xxii. 1132. [2] *Ibid.* 1140. [3] *Ibid.* 1143.

Two days after this Lord North told the King in private that he had determined to retire from office; and his resignation was publicly made known to the House of Commons on the 20th of March.

After twenty years of fighting the Whigs had beaten the King. The Rockingham Ministry was formed. In it were united men who had widely different views on Constitutional questions. The Rockingham Whigs, the Russells, the Cavendishes, and their friends, regarded the government of England as the privilege of a few great families; while the Shelburne Whigs, representing the ideas of Chatham, held that England should be governed by the people of England. Rockingham was first Lord of the Treasury. Shelburne and Fox were the Secretaries of State.[1] Of the minor offices, that of Paymaster of the Forces was filled by Burke, and that of Treasurer to the Navy by Barré, who thus fulfilled Dundas's prophecy about the Irish warming-pan. Dundas found himself Lord Advocate in a Whig Government.

Soon after this Dundas made a speech on the affairs of India, a department of government in which he ultimately achieved his greatest successes. He had early seen that the proceedings of the East India Company would come before Parliament, and had made a study of the question. The Regulation Act of 1773 had established a Governor-General and a Supreme Court of Judicature for the British dominions in India. Differences had arisen between this Court and various bodies in India; and in 1781 two Committees had been appointed to consider the condition of India. The

[1] The Rockingham Cabinet consisted of eight:—Lord Rockingham, First Lord; Lord John Cavendish, Chancellor of the Exchequer; Admiral Keppel, First Lord of the Admiralty; Mr. Fox and Lord Shelburne, Secretaries of State; Lord Camden, President of the Council. Duke of Grafton, Lord Privy Seal; General Conway, Commander-in-Chief. Dunning was afterwards added as Chancellor of the Duchy of Lancaster, with a peerage (Lord Ashburton), and Thurlow continued Lord Chancellor.

first of these, called the Select Committee, and presided over by General Smith, an Opposition member, was to report on the Administration of Justice in Bengal; the second, called the Secret Committee, was to report on the causes of the war in the Carnatic, and the state of the British possessions in that part of India. The Lord Advocate was Chairman of the "Secret Committee."[1]

A mass of evidence was collected; and on the 9th of April 1782 Dundas called the attention of the House to the condition of India.[2] He spoke for three hours. "It was then, perhaps," says Lord Mahon, "more than on any previous occasion that he fully showed, or saw acknowledged, the mastery of debate which he so long retained." He condemned, with unsparing severity, the arbitrary deeds of the East India Company, and embodied his views in one hundred and eleven resolutions, which contained, among other important matters, the germ of the future proceedings against Warren Hastings. The resolutions were agreed to; and some weeks later the House, on the motion of Dundas, declared that Warren Hastings, having acted in a manner repugnant to the honour and policy of England, ought to be removed from office.[3] The Government intended to insist on the dismissal of Hastings, and the Court of Directors agreed to an order for his recall. But the death of Rockingham produced a crisis, during which the order of recall was rescinded by the Directors.[4] The fact, however, that Dundas was the foremost accuser of Hastings is important in the light of his subsequent conduct.

While these affairs were under discussion, Pitt brought the question of Parliamentary Reform before the House of Commons. On the 7th of May 1782 he moved for a Com-

[1] Mill, History of British India, iv. 461, 462.
[2] Parl. Hist. xxii. 1275-1283.
[3] *Ibid.* xxiii. 75.
[4] Mill, History of British India, iv. 465.

mittee to inquire into the state of the representation, and in his speech thanked God that the voice of the people had happily prevailed, and that the country was now blessed with a Government whose wishes went along with those of the people for a moderate reform of the errors which had intruded themselves into the Constitution. But the Ministry was divided on the subject. Fox supported Pitt.[1] Dundas declared himself against the motion. "The Constitution," he said, "has existed for ages pure, and it is not a proper time now to think of altering it."[2] Sheridan took Pitt's side, and replied to Dundas; but, on a division, Pitt was defeated by twenty votes.[3]

The Rockingham Ministry was torn by internal dissensions; and, in particular, Fox and the Lord Advocate were on bad terms. Dundas was gradually preparing for the time when he was to unite his fortunes with those of Pitt. When speaking on the question of Parliamentary Reform, he had contrived to pronounce a eulogy on Chatham, even while opposing the views of Chatham's son. To Pitt he was always more than courteous; to Fox, on the other hand, he was often barely civil. The day after the debate on Pitt's motion, General Burgoyne wrote, "The Advocate spoke long, ill for him, but offensively against Charles. He seems to have taken up that line of late;" and Fox himself had noticed that Dundas had not only been offensive to him, but had even gone the length of hinting that his motives were not so pure as those of Pitt.[4] On another occasion the Lord Advocate had openly agreed with Pitt against Fox. At last his hostility became so persistent that Fox declared that either the Lord Advocate or he must resign. Some communications passed between them, the result of which was that Dundas sent a message assuring Fox that he felt

[1] Parl. Hist. xxii. 1432. [2] *Ibid.* 1434. [3] Ayes, 161; Noes, 141.
[4] Memorials and Correspondence of Fox, i. 323.

the most entire goodwill towards him. So the matter ended; but the quarrels within the Government continued throughout the rest of its existence.[1]

Rockingham died on the 1st of July 1782; and after that event the split in the Cabinet could no longer be hidden. The Rockingham Whigs regarded the Duke of Portland as their leader; but the King made Shelburne First Lord of the Treasury. Fox had previously threatened to resign because he had been outvoted in the Cabinet on the terms of peace with America. He now gave up the seals, and was followed by the Duke of Portland, Lord John Cavendish, Burke, Sheridan, and other members of the Government. Their places were soon filled. Pitt became Chancellor of the Exchequer in place of Lord John Cavendish; Townshend succeeded Fox as Secretary of State; and Barré succeeded Burke as Paymaster of the Forces.

Dundas retained his place of Lord Advocate; but for some time he was not much in the House of Commons. Shelburne, however, anxious to secure his support, offered him, in addition to the office of Lord Advocate, the Treasurership of the Navy, the office of Keeper of the Scottish Signet for life, *and the patronage of all places in Scotland*.[2] This offer was accepted; and Dundas, already powerful, became the most powerful man in Scotland.[3]

On the 11th of July Parliament was prorogued; and the attention of Government was devoted, during the recess, to settling the terms of peace.

In December both Houses reassembled. In the House

[1] Memorials and Correspondence of Fox, i. 326-329. [2] *Ibid.* ii. 29.

[3] It appears from a letter of George III. to Lord North that it had previously been intended to appoint Dundas Treasurer of the Navy. "If the Lord Advocate accepts the office of Treasurer of ye Navy, I shall not consent to his great Scotch office for life. The trouble he has given this winter is not a reason for making him independent; and great as his desires seem to be, that of the best English House of Commons office, and one of £2000 per annum in Scotland during pleasure, are no small recompences." George III. to Lord North, 6th Feb. 1782.

of Commons three parties could be distinguished: the Ministerialists, who supported Lord Shelburne; Lord North's party, mainly composed of Tories, or persons who were bound to him by personal ties; and the supporters of Fox, including most of the Rockingham Whigs.[1]

The treaties of peace were signed at Paris on the 20th of January, and laid before these conflicting parties on the 27th.

So unstable was the position of the Ministry, that Lord Shelburne decided it would be impossible to carry on the Government without a vote of confidence. His difficulties were increased by constant quarrels within the Cabinet; and he agreed that Pitt should attempt to gain the support of Fox by asking him to take office. Pitt and Fox met; but Fox declined to serve under Shelburne.[2]

Dundas then endeavoured to secure the aid of Lord North. William Adam of Blair Adam, at that time member for the Wigtown burghs, was the personal friend both of Lord North and of Dundas; and with him the Lord Advocate had several private meetings, minute details of which are given in the Memorials of Fox.[3]

Dundas told Mr. Adam that a vote of confidence was absolutely necessary, that he and Lord Shelburne desired to unite with Lord North, although the other Ministers would not agree to do so, and that if Lord North himself wished to coalesce with Lord Shelburne, he must give his complete support to the Ministry. "Such complete support was necessary," Mr. Adam afterwards explained to his friends, "to enable Lord Shelburne and Mr. Dundas to overcome the prejudices of the other Ministers; and in that way Lord North and his friends might be brought into office at the end of the session in a respectable manner, some of his friends having offices, and himself a great, but not a Cabinet, place."

[1] Memorials and Correspondence of Fox, ii. 29.
[2] Stanhope, Life of Pitt, i. 72, 73.
[3] Memorials and Correspondence of Fox, ii. 31-37.

Dundas also told Mr. Adam that Lord Shelburne contemplated having to resign, so that Government might become stronger by a union between Pitt and Fox. "This," said the Lord Advocate, "will be followed by a dissolution of Parliament, and the extinction of Lord North's party." Mr. Adam asked if nothing could be done to prevent this. "Nothing," said Dundas, "but Lord North's support of the peace."

Mr. Adam informed Lord North of what the Lord Advocate had said; but it did not produce the result which Dundas had anticipated. "Instead of terrifying Lord North into compliance, he roused him to resistance." At a personal interview with Dundas, Lord North refused to commit himself; and the same day, the 14th of February 1783, he had his first interview with Fox.[1]

They speedily agreed to oppose the Government. Shelburne was to be turned out; the Duke of Portland was to be Prime Minister; Fox and North were to be Secretaries of State.

The famous Coalition was thus arranged. Rumours of the strange union between Fox and Lord North were soon afloat; and on the 17th of February, the day fixed for the debate on the terms of peace, the House was in a state of suppressed excitement. Lord John Cavendish moved an amendment to the Government address. Lord North, rising from beside Fox, supported the amendment. Powys sneered at the alliance between Fox and the Tory leader. Burke denied that there was anything strange in such an alliance, and pointed to Dundas, sitting on the Treasury Bench between Pitt and Townshend. On this Dundas rose. "With regard to the amendment," he said, "the more he considered it the more he was surprised. Could not the two noble Lords, in the honeymoon of their loves, have be-

[1] Memorials and Correspondence of Fox, ii. 37.

gotten a more vigorous offspring? Was such a sickly child the first-born of such able parents, and were they obliged to usher it into life in a condition so rickety and impotent? Let the noble Lord in the blue ribbon consider the state of that day's business, and then see if it was not more consistent with the manly simplicity of his mind to vote for the address originally moved."[1]

To this coarse speech Sheridan replied by accusing Dundas of inconsistency in voting for the independence of America, which he had always hitherto opposed, and by hinting that the learned Lord's politics were so versatile that when interest called him, every other consideration gave way.[2]

The debate lasted all night; and at seven in the morning the Government was defeated by sixteen votes. A few days later Ministers were again defeated. Shelburne then resigned; but Fox and North did not come in at once. Shelburne's resignation was placed in the King's hands on the 24th of February; and from that day till the 2d of April the King refused to receive the Coalition leaders. A few days after Shelburne's resignation Dundas boldly proposed to the King that Pitt should be made Prime Minister.[3] The King sent for Pitt, who, on the morning of the 27th, informed Dundas that he had accepted the King's offer; but in a few hours he changed his mind.[4]

During the whole of March the King continued to resist. He even said to the Lord Advocate that "sooner than yield he would go to Hanover."[5] He turned from Pitt to North, who refused to take office except under the Duke of Portland, and with Fox as his colleague. Again the King appealed to Pitt, whom Dundas was urging to become Prime

[1] Parl. Hist. xxiii. 469, 470.
[2] *Ibid.* 483.
[3] Memorials and Correspondence of Fox, ii. 42, 43.
[4] Stanhope, Life of Pitt, i. 85.
[5] Memorials and Correspondence of Fox, ii. 44.

Minister. But Pitt again refused, and soon after resigned the Chancellorship of the Exchequer. Two days after this, on the 2d of April, the King gave in; and the Coalition Ministry, nominally headed by the Duke of Portland, but in reality led by Fox, came into power.

Dundas, who was succeeded by Townshend as Treasurer of the Navy, continued to hold the office of Lord Advocate for some time longer; but his sympathies and his hopes were henceforth with Pitt.

On the 7th of May the House of Commons was crowded when Pitt brought forward, once more, the question of Parliamentary Reform. He moved three resolutions; one for the prevention of bribery and expenses at elections, another for punishing corrupt practices, and a third for adding to the number of County and Metropolitan members.[1] Exactly twelve months had passed since he had first proposed a reform in Parliament. On that occasion Dundas had spoken and voted against him; but since then the Lord Advocate had changed his opinions. "Granting so much," he now said, "to the wishes of the people would be the best means of putting an end to the business entirely, and would certainly, in the popular phrase, give a fresh infusion of fine blood to the constitution of the House."[2] The Government was divided; Fox voted with Pitt; Lord North against him. In spite of having gained the support of Dundas and others, Pitt was defeated, the resolutions being rejected by a majority of one hundred and forty-four.[3]

Dundas was now on terms of great intimacy with Pitt. Their friendship was noted and commented on. Both Sheridan and Fox were suspicious of the Lord Advocate.

[1] Parl. Hist. xxiii. 834.

[2] *Ibid.* 865. Dundas explained his position by saying that he voted against reform in the previous session because there was then no specific proposal before the House.

[3] Ayes, 293; Noes, 149.

Sheridan had openly sneered at his conversion to the cause of reform; and Fox believed that, along with Thurlow and in collusion with the King, he was plotting to destroy the Ministry. No member of the late Government remained in office so long after Lord Shelburne's resignation as Dundas. But in spite of his boast that "no man in Scotland will venture to take my place," Fox was determined to turn him out.[1] The Lord Advocate was accordingly informed that his services were no longer needed. The influence which he had acquired in Scotland is shown by a letter which Lord Loughborough wrote to Fox soon after this:—"I am perfectly convinced," he wrote, "that the more vigour Administration exerts there the stronger its influence will be. It began to be seriously credited that it was not permitted to them to remove any person protected by Dundas."[2]

Dundas continued to discharge the duties of Lord Advocate after his dismissal, under the circumstances mentioned in the following letter from the Lord Justice-Clerk Miller to Lord North:—"On Tuesday last my Lord Advocate informed me that he had received an officiall letter from Mr. Fox, Secretary of State, signifying that his Majesty had no farther occasion for his service. All the Courts were then sitting; and all the judges agreed that Mr. Dundas' Commission under the Great Seal could not determine but by a new Commission, and accordingly since the receiving the above notification he has continued to appear, and act in his office of Advocate, in all the Courts, as formerly, expecting every day to be superceded by the appointment of his successor. No such appointment has yet arrived. The sessions of all the three Courts of Session, Justiciary, and Exchequer, being now over, and the judges about to retire to the country for the vacation, it is my duty to apprize your Lordship and the

[1] Memorials and Correspondence of Fox, ii. 86. [2] *Ibid.* ii. 203.

Kings Servants of those circumstances in the publick Service, which either required the appointment of a new Advocate before the Courts broke up, or the delay of a new appointment, till the Circuits are over. In the Courts of Session and Exchequer, no inconveniency can arise from the delay. But in the Courts of Justiciary, where I preside, the case is very different. After delaying till the last day, in expectation of receiving and recording the Commission of a new Advocate, which the Law requires, I was obliged in the newspapers of yesterday to publish the appointment of the Circuit Courts for the ensuing autumn. They begin about the middle of September, and will be all finished before the 6th of October. All indictments and prosecutions of every kind, before the Circuit Courts, proceed in the name of my Lord Advocate for his Majesty's interest, or, with his concourse, if pursued by private partys. These indictments are prepared by his three Deputys, appointed by him to attend the three Circuits, or by the Solicitor-Generall, acting under the like Commission from him. This must be done in the course of the two ensuing weeks, in order to be ready against the opening of the Circuit Courts. If my Lord Advocate had declined acting any longer in his office all his Deputys must necessarily have done the same, and an entire stop to the whole Criminall bussiness of this part of the Kingdom must have ensued. But he has acted upon a very different principle, and has readily and cheerfully agreed to proceed in executing every branch of his office till the whole business of the ensueing circuits shall be concluded. The publick at large, and his successor in particular, whoever he may be, will have great reason to thank him for his conduct. I am therefore humbly of opinion, that unless the King's appointment of a new Advocate has been sent off from your Lordship's office, before this letter shall come to hand, it ought to be stopt, till after the 5th of October, when all the bussiness

of the Circuits will be ended; and this is the opinion of the whole judges. It was my duty to communicate the contents of this Letter to my Lord Stormont as Justice-General."[1]

The Government, however, did not desire that Dundas should remain in office any longer; and in the Honourable Henry Erskine was found a man who "would venture" to take his place.[2]

Parliament met on the 11th of November. The King's Speech referred to the situation of the East India Company; and soon after Fox introduced his famous East India bill, by which it was proposed to transfer the government of India from the Directors of the Company to seven Commissioners, who were to be named, first by Parliament, and afterwards by the Crown. In the House of Commons, and in the country, the bill was furiously attacked as a violation of the rights of the Company, and an attempt to throw an undue amount of patronage into the hands of Government. During the debates in the Commons, which lasted from the 18th of November to the 8th of December, Dundas spoke twice against the bill, which, by various majorities, passed all its stages, and was sent to the Upper House.[3]

The fate of the Coalition Ministry was involved in the fate of the East India bill. The King saw this, caused it to be known that he would regard as foes those who voted

[1] Lord Justice-Clerk Miller to Lord North, 10th Aug. 1783, Scot. MSS. Record Office.

[2] The difficulty raised by the judges was overcome by Lord Advocate Erskine going on with the prosecutions raised at the instance of Dundas. The rule that a prosecution raised by one Lord Advocate may be insisted on by his successor was soon recognised. In 1784 a prosecution raised by Erskine was insisted on by Ilay Campbell, the new Lord Advocate, and in 1804 a prosecution raised by Lord Advocate Hope was insisted on by his successor, Sir James Montgomery. Hume, Commentaries, ii. 267.

[3] It is to be noticed that Dundas at this time suggested the appointment of a Secretary of State for India, an office which was created in 1858. "I would rather," he said, "see the master of the show than the puppets he meant to move." Parl. Hist. xxiii. 1402, 1403.

with the Government, and thus secured the rejection of the measure. It was on the 17th of December that the Lords threw out the bill. At midnight on the 18th a message was sent to Lord North and Fox by the King, requesting them to deliver up the seals of their offices, "as a personal interview would be disagreeable to his Majesty." The Coalition Ministry was at an end.

Next afternoon Lord North confirmed the rumour that the Government was out by taking his seat on the front Opposition bench. Here he was joined by Dundas. Presently Fox came in. When he noticed Lord North and Dundas sitting together, he took the latter by the arm, and exclaimed, amidst the laughter of the House, "What business have you here? Go over to the Treasury bench!" This incident had scarcely taken place, when Mr. Arden, then member for Newport, and soon after appointed Solicitor-General, moved for a new writ for the borough of Appleby; and the House then knew that, at the age of twenty-four, Pitt was Prime Minister of England.

Pitt could not take his seat until after his re-election; and the duty of facing the Opposition fell mainly on Dundas, who was not yet in office. He at once moved that the House should meet on the following day, in order to pass the Land Tax bill in time to meet large payments due by the Treasury at an early date. This the Opposition would not agree to; and Dundas, who knew that a division was hopeless, gave in.[1] This was the commencement of that struggle between the Government of Pitt and the majority of the House, which lasted for the next three months.

In the new Cabinet, which consisted of seven, Pitt, who held the offices of First Lord of the Treasury and Chancellor of the Exchequer, was the only commoner. Thurlow, the Duke of Richmond, and Lord Howe, were the only three of

[1] Parl. Hist. xxiii. 237.

his colleagues on whom, in the House of Lords, he could depend in an emergency. In the Commons, Dundas, who became Treasurer of the Navy, was the only Minister, besides Pitt, who could hold his own against the formidable array of talent which adorned the Opposition benches. For three months Pitt and Dundas led the minority of the House against a triumphant Opposition. An East India bill, introduced by Pitt, was rejected, and in sixteen divisions the Government was defeated after late and angry debates. There was no thought of rest. Often the House, after dividing, did not rise, but resumed the struggle. In one sitting the Government was defeated twice, first at half-past two, and again at seven in the morning. As day after day passed, and Pitt stood at his post, neither resigning office nor dissolving Parliament, the Opposition grew fiercer. By the beginning of March party feeling was at fever-heat. An address to the Throne, praying the King to remove his Ministers, was carried in the House and presented to the King. He declined to grant the wishes of the majority of the Commons; and the House, on the motion of Fox, agreed to take his Majesty's answer into consideration on Monday the 8th of March.

The majorities against Ministers had been gradually diminishing for some time; and the public watched the progress of events with intense interest. From an early hour on the eventful Monday crowds gathered in the vicinity of Westminster Hall. By eleven o'clock the public gallery was full. It was understood that this was to be the supreme effort of the Opposition; and strangers were happy to await, for five hours, the time when the final debate was to begin. Unfortunately for the public, and indeed for history, Sir James Lowther, member for the county of Cumberland, had brought a friend for whom he wished a seat in the gallery. The gallery was full. Sir James lost his temper, and

insisted on clearing it. Many members remonstrated with him, but in vain; and all the strangers had to leave. "In consequence," says the Parliamentary History, "of this circumstance, a full report of what was said upon this occasion has not been preserved."[1] The main incidents, however, of the debate are known. Fox moved a long address to the Throne, praying for the removal of Ministers, and at the same time assuring his Majesty that the Commons had no wish to dispute the King's prerogative of appointing his own Officers of State. Pitt took little or no part in the debate.[2]

Dundas seems to have been the hero of the night. "Seldom," says Wraxall, "have I heard Dundas, during the course of his long and brilliant career, display more ability or eloquence than on that evening, which may, in fact, be regarded as having terminated the contest between Pitt and Fox, between the Crown and a majority in the House of Commons." At midnight the House divided. When the numbers were announced, amidst suppressed excitement, it was found that Ministers had been defeated by a majority of only one. A loud shout rose from the Ministerial side of the House. On the Opposition benches there was silence.[3] Soon after this Parliament was dissolved. The result of the general election was the loss of one hundred and sixty seats to the Opposition, and the complete triumph of Pitt. Dundas was duly returned as member for Midlothian, and Ilay Campbell, his successor as Lord Advocate, for the Glasgow burghs.

In the first session of the new Parliament, which met on the 18th of May 1784, Pitt carried an Act which introduced the system by which India was governed until after the

[1] Parl. Hist. xxiv. 733.
[2] Wraxall, iii. 788.
[3] Wraxall, Historical Memoirs of My Own Time, iii. 792. The division was 191 to 190, Parl. Hist. xxiv. 744.

Mutiny of 1857. The Directors of the East India Company were left to exercise their functions. But a Board of Control was established to superintend their proceedings; and at the head of the Board of Control there was placed a President, who, as a member of the British Ministry, was responsible to Parliament. Dundas was appointed to this important office; and henceforth he devoted himself to the management of Indian affairs with the most untiring zeal. "His celebrated Reports," says Lord Brougham, "upon all the complicated questions of our Asiatic policy, although they may not stand a comparison with some of Mr. Burke's in the profundity and enlargement of general views, any more than their style can be compared with his, are nevertheless performances of the greatest merit, and repositories of information upon that vast subject, unrivalled for clearness and extent. They, together with Lord Wellesley's Despatches, form the sources from which the bulk of all the knowledge possessed upon Indian matters is to be derived by the statesmen of the present day."[1] On the other hand, the historian of British India expresses a less favourable opinion of his services. "The mind of Mr. Dundas," he says, "was active and meddling, and he was careful to exhibit the appearance of a great share in the government of India; but what was it, as President of the Board of Control, that he ever did? He presented, as anybody might have presented, the Company's annual budget, and he engrossed an extraordinary share of their patronage. But I know not any advice which he ever gave, for the government of India, that was not either very obvious, or wrong."[2]

[1] Statesmen of the Time of George III., i. 307.

[2] Mill, History of British India, iv. 491. (2d ed. 1820). I cannot, of course, attempt to give even an outline of Mr. Dundas's views on Indian policy. On one point which often has been, and often will be debated, he expressed himself as follows: "The idea of an attack on India, either through Persia or some part of Asia, is one I have had long and often in contemplation, in the event of several adverse contingencies; and it was upon that ground that I insisted with the Court

At the close of the session Dundas brought in a measure which was very popular in Scotland. This was a bill to restore the estates which had been forfeited in the Rebellion of 1745. Having traced the history of the forfeitures, and explained how the country had gradually become loyal, he stated the principle on which the restoration was to take place. This was that the estates should be given to those heirs, male or female, to whom they would have gone by legal descent had no act of rebellion been committed by their ancestors. In short, all recollection of the Rebellion was to be cancelled, and the descendants of the rebels were to be regarded as faithful subjects. In his speech Dundas alluded to the fact that Chatham was the first Minister who had found in the Highlands of Scotland men to fight the battles of England. "It is," he said, "an auspicious omen, that the first blow was given to this proscription by the Earl of Chatham, and may well justify a hope that the remains of the system will be completely annihilated under the administration of his son, who will complete the good work which his great father began."[1] In the Commons the Lord Advocate's bill was supported by all parties. Fox said that the exiled families had been "sufficiently punished by forty years' deprivation of their fortunes for the faults of their ancestors." Not only were the Highlanders now thoroughly loyal, but, as Dundas said, there was scarcely a Highland family which had not fought for King George, and atoned, with its blood, for the errors of the past. In the Lords, Thurlow grumbled and opposed the bill, but it was allowed to become law.[2]

And now for twenty-two years Pitt was the foremost man in Britain. During this long period his most trusted

of Directors on establishing a Resident at Bagdad." Dundas to Castlereagh, 9th July 1807, Castlereagh Despatches, v. 456. At that time it was France, and not Russia, from which an attack on India was feared.

[1] Parl. Hist. xxiv. 1318 [2] 24 Geo. III. cap. 57.

In the hands of Fox, or Sheridan, or Burke, the private character of Pitt and Dundas was safe; but the hack writers and the caricaturists of the day could not be expected to refrain from taking notice of failings which were notorious. In one cartoon, entitled "God save the King! in a Bumper; or, An Evening Scene three times a week, at Wimbledon," Pitt is represented sitting on a table, trying to fill a glass from the wrong end of a bottle, while Dundas exclaims, "Billy, my boy, all my joy!" Another cartoon is called, "The Triumph of Bacchus; or, a Consultation on the Additional Wine Duty." Pitt, as Justice Midas, sits on a barrel, drinking and smoking; Dundas, seated on a tub and drinking, calls out, "Who dare oppose wise Justice Midas?" and near them the Duchess of Gordon, scantily clad, and lolling against a barrel, says, as she drinks, "Oh, what a god is Justice Midas! oh, the tremendous Justice Midas!"

But, during the long period of their intimacy, Pitt and Dundas were not held together merely by the precarious ties which unite boon companions or political colleagues. Pitt was a confirmed bachelor. In spite of his love for Lady Hester Stanhope and her lifelong devotion to him, there can be no doubt that she sometimes made his home uncomfortable;[1] and on these occasions, it is said, the Minister found a refuge in the agreeable society of Lady Jane Dundas.[2]

Almost all the Lord Advocates have, on leaving office, retired to the bench or into private life. It was otherwise with Dundas. From the time when the Coalition Ministry was defeated his career was that of a Minister; and he took a prominent part in the conduct of affairs during that eventful period of British history which extended from 1784 till 1806, when he fell from place and power. He had been

[1] Stanhope, Life of Pitt, iii. 161.

[2] Dundas married, in July 1765, Elizabeth, daughter and heiress of David Rennie of Melville Castle. That marriage having been dissolved, he married, in April 1793, Lady Jane Hope, daughter of John, second Earl of Hopetoun.

Lord Advocate during the Tory Administration of Lord North, during the Whig Administrations of Lord Rockingham and Lord Shelburne, and during part of the time when the Coalition Ministry was in office. When Pitt came into power in 1784 he became Treasurer of the Navy; and during the remainder of his career he filled, at different times, the offices of Home Secretary, Secretary at War, and First Lord of the Admiralty. In his position, moreover, of President of the Board of Control, he was virtually Secretary of State for India. I therefore cannot attempt to do more than give an outline of the leading incidents of his long and busy life.

One of the most important events which took place during the first years of the Pitt Administration was the trial of Warren Hastings; and in the preliminary proceedings Dundas was a prominent figure. In May 1782 the House of Commons had, on the motion of Dundas, passed a resolution that Hastings ought to be recalled from his duties as Governor-General of India; but the Board of Directors, after signing an order to that effect, had taken advantage of the embarrassed state of public affairs to rescind it.[1] Hastings accordingly remained in India till 1785. In June of that year he returned to England; and in the session of 1786 proceedings were commenced against him. At this time Pitt had never attacked the late Governor-General; and, of the Ministry, Dundas alone was committed against him.[2]

It was on the 1st of June 1786 that Burke laid before the House of Commons in Committee the charge against Hastings arising out of the Rohilla war, and moved that the resolution of May 1782 should be read. The resolution was

[1] *Supra*, p. 107.

[2] Macaulay, Essay on Warren Hastings. Gleig maintains that Dundas had all along been actuated by a feeling of bitter hostility towards Hastings, and that the Secret Committee, which was presided over by Dundas, had not given the Governor-General fair play. Memoirs of Warren Hastings, ii. 472, 473.

read.[1] It was known that Dundas now intended to support Hastings; and on the following day Fox attacked him on the subject. "What colouring," he said, "the learned gentleman can possibly give to his behaviour, it is impossible to conjecture. After having so solemnly bound himself to carry on this inquiry, to evade it in the manner he has done is too shameful to admit of apology."[2] Dundas followed Fox, and explained his position by saying that he still thought the Rohilla war unjust, but that what he had previously demanded was the recall of Hastings, not a criminal prosecution. He reminded the House of the services which Hastings had rendered to the country, and spoke of him as the "Saviour of India." The debate lasted till half-past seven in the morning, when the House divided in favour of Hastings by a majority of fifty-two votes.

A fortnight later the House again went into Committee, and Fox brought forward the charge relating to the Rajah of Benares.[3] Pitt, who had not spoken on the Rohilla war, rose early in the evening, and the friends of Hastings greeted him with cheers. The Prime Minister differed from Fox, who had denied the right of the Governor-General to make a demand on Cheyte Sing for aid towards the defence of the Company's interests in Bengal. He went further, and maintained that to give a right of demanding without the power of punishing a refusal would be absurd. Here his defence of Hastings ended. The fine imposed by Hastings on the Rajah had, he said, been too heavy, and he would therefore support the Benares charge.[4] At the close of the debate the Committee divided, and Fox's motion was carried by a majority of forty. Dundas had not spoken, but he voted in the majority.

This complete change on the part of Government caused great surprise. Twenty-four hours before a whip against

[1] Parl. Hist. xxvi. 42. [2] *Ibid.* 78. [3] *Ibid.* 91. [4] *Ibid.* 101-113.

Fox's motion had been sent out from the Treasury.[1] Till Pitt had nearly finished his speech every member of the House had believed that he would vote in favour of Hastings. "Some article of secret history is needed to account for this sudden phenomenon," is the comment of the historian of British India.[2] Hastings, who hated Dundas, blamed him for what had taken place, and said that early that morning Dundas went to Pitt and had a private conference of three hours with the Minister, at the end of which it was resolved that the motion should be supported by Government. Pitt told Wilberforce that Hastings had behaved so badly that he could no longer support him. It may have been, as some thought, that Dundas was jealous of Hastings, and feared that he might supplant him at the Board of Control. This view is supported by an incident which is said to have taken place at one of the subsequent stages of the case. Dundas, in answer to Lord Maitland, who had asked him what he thought would be the result of the trial, is reported to have said, "I don't care what is done with him, for you and your friends in Opposition have done our business, by keeping him out of the Board of Control."[3] On the other hand, Dundas himself told Lord Cornwallis, in a private letter, that some of the charges against Hastings were so strong that it would be impossible to resist them. "I rest in the most perfect confidence," he wrote, "in the complete restoration of our prosperity in India. We never had a Government of India, both at home and abroad, acting in perfect unison together, upon principles of perfect purity and integrity; these ingredients cannot fail to produce their consequent effects. . . . The only unpleasant circumstance is the impeachment of Mr. Hastings. Mr. Pitt and I have got great credit from the undeviating fairness and candour

[1] Macaulay, Essay on Warren Hastings.
[2] Mill, History of British India, v. 57.
[3] Memorials and Correspondence of Fox, ii. 256.

with which we have proceeded in it, but the proceeding is not pleasant to many of our friends; and, of course, from that and many other circumstances, not pleasing to us; but the truth is, when we examined the various articles of charges against him with his defences, they were so strong, and the defences so perfectly unsupported, it was impossible not to concur; and some of the charges will unquestionably go to the House of Lords."[1]

Before the surprise caused by the conduct of Government had passed away Parliament rose; and further proceedings against Hastings were delayed till the following year, when the celebrated trial began.

During the session which had just closed the debating power of the Government had been strengthened by the addition to its ranks of William Grenville, who was appointed Vice-President of the Board of Trade, and of Lord Mornington, afterwards Marquis of Wellesley, who became a Lord of the Treasury. But Pitt relied chiefly on Dundas, who, four years later, became Home Secretary at a Ministerial crisis occasioned by the state of affairs in the east of Europe.

In 1791 Russia and the Porte were at war; and the forces of the Empress Catherine had taken the fortress of Oczakoff and conquered the wide tract of country which lies between the Dniester and the Bog. To force Russia to surrender her conquests became the policy of the British Ministry; and on the 28th of March 1791 there was presented to the House of Commons a message from the King which stated that, in order to add weight to the demands of England, it was judged necessary to augment the naval forces of the kingdom. The Russian Armament, as this augmentation was termed, was defended by Pitt on the ground that any gain of strength to Russia at the expense of Turkey was dangerous to the interests of England, and inconsistent with

[1] Dundas to Cornwallis, 21st March 1787, Cornwallis Correspondence, i. 292, 293.

the balance of power in Europe. The Whig party united against the Ministry.

By various speakers and on various grounds the Russian Armament was opposed. What right, it was asked, had we to interfere with Russia? Had she attempted to fix a stain upon our honour? Had she invaded the territories of the British Crown? Had she committed depredations upon the trade and property of its subjects? There was nothing to be gained by running the risk of war. We had little to expect but bear-skins; and as we had expended four millions to obtain cat-skins from the north-west of America, we might now add blood to treasure to gain bear-skins in the north-east of Europe.[1] The proposed Armament was opposed on higher grounds by Fox and Burke. Fox argued with his usual vehemence against the policy of Government towards Russia, declaring that it was insolent and foolish to call upon her to surrender the fruits of a successful war. Burke said that England might as well declare that Russia was never to conquer any territory, however small or insignificant, and that if she ever did so, the House of Commons would give a vote of confidence for an indefinite expense to subdue and humiliate her. He resisted the policy of giving British support to the Turks. "The Ministers and the policy," he said, "which give these people any weight in Europe, will deserve all the bans and curses of posterity. All that is holy in religion, all that is moral and humane, demands our abhorrence of everything which tends to extend the power of that cruel and wasteful Empire. Any Christian power is to be preferred to these destructive savages."[2] These arguments had great weight in the House. The Government obtained a majority of ninety-three; but many members followed the minister with reluctance.[3]

[1] Parl. Hist. xxix. 57, 58. [2] *Ibid.* 77.
[3] Stanhope, Life of Pitt, i. 409.

A few days later Mr. Grey moved a series of resolutions condemning the preparations for war against Russia.[1] In this debate Pitt took no part, and Dundas replied for the Government. He said that the House was not called on to engage in a war without information. All the Government wanted was support in an armed negotiation. "If this negotiation," he said, "fails to produce its intended effect, and a war should be inevitable, then will be the proper time for the House to require information before they give their support to the Ministers." The distinction which Dundas drew between a war and an "armed negotiation" did not convince the House. A division was taken; and the Ministerial majority declined to eighty.[2] In the country, too, the war preparations were unpopular. Pitt saw that to persist would endanger the existence of the Ministry, and, much against his own inclination, gave in.[3]

In consequence of what had taken place, the Duke of Leeds, Secretary of State for Foreign Affairs, retired from the Government. Lord Grenville succeeded him; and it was the intention of Pitt to recall Lord Cornwallis from India, and make him Home Secretary in place of Grenville. Dundas undertook the duties of the Home Office in the meantime. Cornwallis, however, found it impossible to return to England; and Dundas was appointed Home Secretary.[4] It was thus the fate of Dundas to hold the office of Home Secretary at a period when the triumph of Republicanism in France encouraged the British friends, not only of reform, but also of revolution, and brought about a serious

[1] 12th April 1791, Parl. Hist. xxix. 164-177. The two first resolutions were: (1) "That it is at all times, and particularly under the present circumstances, the interest of this country to preserve peace; (2) That it is neither reasonable nor just to take up arms for the purpose of dictating terms of peace between nations engaged in hostilities, without any reference either to the cause of the disputes or the circumstances of the war."

[2] Parl. Hist. xxix. 217.

[3] Stanhope, Life of Pitt, i. 409, 412.

[4] *Ibid.* i. 414, 415.

domestic crisis. The events of that crisis, the State Trials, the riots, the unpopularity of the Government, how Pitt and Dundas were abused on the platform of the Friends of the People, and portrayed in the streets as murderers stabbing Liberty, the panic of the upper classes, the harsh measures of Government, are well known. In Scotland, the Highlands, at one time the hotbed of sedition, were on the whole quiet. There certainly discontent was to be found; but it arose from a sense of present distress, or a fear of future want, rather than from any political sentiment. But in the towns of Scotland it was different. There the working classes to a man, and many merchants and members of the learned professions also, were for reform; and Dundas believed that very strong measures were necessary in order to stamp out a movement he regarded as dangerous to the Constitution.[1] He shared this belief with the majority of the upper classes. When in Scotland, in December 1791, he was waited upon by persons from all quarters, by the great manufacturers, by magistrates, and by gentlemen from parts of the country where there were no magistrates, all of whom expressed their alarm at the situation of the country, and requested the interference of Government.[2] The Lord Advocate was Robert Dundas of Arniston, nephew of the Home Secretary. I shall afterwards have occasion to show how, during the State Trials of 1793 and 1794, he gave full effect to his uncle's views.

The fact that a new view was now entertained of the relations between the governing classes and the people was illustrated by the proceedings in reference to the renewal of the East India Company's Charter. "People," says Mr. Mill, "had now so generally acquired the habit of lifting their eyes to the management of national affairs, and equal

[1] Private memorandum on the state of Scotland, 1792. Scot. MSS. Record Office.

[2] Parl. Hist. xxx. 45.

treatment to all so forcibly recommended itself as the best rule of government, that the commercial and manufacturing population were impelled to make an effort, more than usually strong, for the freedom of the Eastern trade."[1] In 1793 the Charter of the East India Company was about to expire, and a vigorous move was made against the renewal of the monopoly which it had created. The merchants of Liverpool, Glasgow, and other towns in England and Scotland, did all in their power, by public and private means, to induce Government to throw open the Indian trade.

In vain Dundas laid before the Commons a statement of the financial position of the Company, and drew a brilliant picture of the advantages of the system which was attacked. On the 25th of February he brought in his annual Indian budget.[2] On the 23d of April the House considered the petition of the Company for a renewal of their Charter; and Dundas moved a number of resolutions, the first of which pledged the House to secure to the Company, for a further term of years, the exclusive trade with India.[3]

While admitting that it was unusual to leave the government of an extensive empire in the hand of a commercial association, he defended the government of India by the Company on the ground that the system had worked well hitherto, and that a change might have a bad effect on the minds of the natives. He also defended exclusive trade by the East India Company. "It has of late," he said, "been the fashion in our manufacturing towns to hold meetings, and to come to resolutions that the exclusive privilege of the East India Company was a monopoly, and that it was for the interest of the manufacturers that that monopoly should be done away. I would wish to ask the projectors of such resolutions whether they have examined what the Company

[1] History of British India, vi. 2.
[2] Parl. Hist. xxx. 496-513.
[3] *Ibid.* 660-685.

has been and what they now are. To whom do they owe the riches which they have acquired from the cotton manufacturers? To the East India Company! To whom has Britain been indebted for a great increase of its shipping? To the East India Company! Some gratitude is due for all these benefits." He concluded by saying, "I own that, next to the interests of my country, the prosperity of the East India Company, in the management of whose business I have had my share, claims my first public regard; and I shall feel it to be the most honourable moment of my life, if I have suggested opinions to the Legislature, leading to a system of Indian affairs for the general advantage of Great Britain." With these words he ended a long speech which Pitt afterwards said was one which, "for comprehensive knowledge of the history of India, and of the various sources of the British commerce to the East Indies, though it might have been equalled in the House, had never been excelled."

In spite of the opposition of Francis, the resolutions were agreed to. A bill founded on them was brought in, and passed after a stubborn resistance by Fox. The Charter of the East India Company was renewed for twenty years.

Soon after the declaration of war against France the Ministry was strengthened by the addition to its ranks of the Duke of Portland and some of his adherents. This circumstance brought about a readjustment of offices. From 1746, when the office of Secretary for Scotland was abolished, till 1768, there were only two Secretaries of State. In 1768 a third was appointed to act as Secretary for the Colonies. At the peace of 1782 this third Secretaryship was, along with some other offices, abolished by Statute.[1] From that time till 1794 there were only two Secretaries of State, who were known as the Home Secretary and the Foreign Secretary. The Colonies were under the charge of the Home

[1] 22 Geo. III. cap. 82.

Secretary. The arrangement which Pitt wished to make in 1794 was that Lord Grenville should continue as Foreign Secretary, that the Duke of Portland should be Home Secretary, and that Dundas should have charge of the Colonies, of the East Indies, and of the conduct of the war. But the Duke of Portland had scarcely taken office when it was found that he expected to enjoy all the patronage which had hitherto been in the hands of Dundas. "Under these circumstances," says Earl Stanhope, "Dundas, in a generous spirit, desired to give way. But he declared that he should resign the Seals and relinquish the conduct of the war."[1] But Pitt implored him to remain in office and conduct the war. "I shall," he said, "give up all hope of carrying on the business with comfort, and be really completely heart-broken, if you adhere to your resolution." Dundas still said he must resign. Pitt then went to the King, who wrote a letter to Dundas, pressing him "to continue Secretary of State for the War." This letter Pitt carried to Dundas, and with some difficulty persuaded him to remain in office.[2]

He was Secretary at War till the Addington Ministry came in, and his name is specially associated with the short but triumphant Egyptian Campaign of 1801. The landing at Aboukir, the taking of Rosetta, the surrender of thirteen thousand Frenchmen at Cairo, the occupation of Alexandria, and the expulsion of the French from the Delta of the Nile, were entirely due to the energy and foresight of Dundas, who planned the expedition, and carried it out against the opinion of both Pitt and the King. Long afterwards, at Perthshire dinner-tables, Dundas used to tell with

[1] Life of Pitt, ii. 54.

[2] Stanhope, Life of Pitt, where the correspondence is given at length, along with an extract from a letter written by Dundas to his nephew, the Lord Advocate, in which he says, "Here then I am still. I must remain a very responsible Minister, with a great deal of trouble, and without power or patronage, all of which I have resigned into the hands of the Duke of Portland."

pride how once, at a private party, the King proposed a toast "to the Minister who planned the expedition to Egypt, and, in doing so, had the courage to oppose his King."

In 1800 Dundas was in bad health, and would gladly have retired from office. But he considered himself bound to support Pitt so long as the war lasted, and therefore remained at his post. Soon, however, he was relieved of all responsibility, for, on the 14th of March 1801, the Pitt Administration, which had lived through the turmoil of three general elections, came to an end.

Two years before, while the union with Ireland was under discussion, Dundas had had a conversation with the King, who was in favour of the union. "I only hope," his Majesty said, "that Government is not pledged to anything in favour of the Roman Catholics." "No," answered Dundas, "that will be a matter for future consideration." The King then said he had scruples because of his Coronation Oath. Dundas began to explain that the oath referred to the executive, and not to the legislative, functions of the Crown. On this the King exclaimed, "None of your Scotch metaphysics, Mr. Dundas! none of your Scotch metaphysics!"[1] This expression was found to have a meaning in 1801. The Irish had been led, during the union controversy, to expect that that measure would speedily bring about a relaxation of the penal laws affecting the Roman Catholics. In January 1801 the subject was brought before the King. He would not hear of Catholic Emancipation. A Ministerial crisis was the result; and on the 14th of March Pitt resigned, and the Addington Ministry came in. The Administration, to lead which Addington stepped from the Speaker's chair to the Treasury bench, displayed neither great talents nor very fixed principles. The Tory Lord Eldon was Chancellor.

[1] Life of Sir James Mackintosh, i. 170, 171; Gifford, Political Life of Pitt, iii. 634; Cornwallis Correspondence, iii. 325-349.

The Duke of Portland, half Whig half Tory, was President of the Council. Dundas, who was succeeded as Secretary of State by Lord Hobart, gave the Ministry a general support.

On the 29th of June 1802 the first Parliament of the United Kingdom was dissolved. Dundas agreed to manage the elections in Scotland in the interests of the Government.[1] The result was that of the forty-five members only two were Whigs, the remaining forty-three being his own nominees. He himself was duly returned for the city of Edinburgh on the 12th of July 1802; but before the end of the year his seat was vacant. Unknown to Pitt, he had accepted a peerage, and was called to the Upper House as Viscount Melville and Baron Dunira.[2]

The new Government was soon in trouble. There was a strong desire outside of the Houses of Parliament to see Pitt once more in office. Addington himself was quite willing to retire. He did not, however, at once propose that Pitt should be Prime Minister. His suggestion was that the Cabinet should be rearranged. Lord St. Vincent was to retire, and Lord Melville was to take his place as First Lord of the Admiralty. He himself and Pitt, it was proposed, should be Secretaries of State. Some person who would suit the views of all parties was to be First Lord of the Treasury.[3] Lord Melville undertook to sound Pitt on the subject, and went to Walmer for the purpose. Pitt afterwards told Wilberforce what passed. "Dundas," says Wilberforce, "accordingly confiding in his knowledge of all Pitt's ways and feelings, set out for Walmer Castle; and after dinner and port wine, began cautiously to open his pro-

[1] Stanhope, Life of Pitt, iii. 87.

[2] Earl Stanhope mentions that Pitt was very much surprised to hear that Dundas had taken a peerage. From the end of June, when Parliament was dissolved, till the 21st of December, when notice of the peerage was published in the Gazette, Pitt had neither seen nor heard from Dundas. Life of Pitt, iii. 87.

[3] Stanhope, Life of Pitt, iii. 109.

posals. But he saw it would not do, and stopped abruptly. 'Really,' said Mr. Pitt, with a sly severity, and it was almost the only sharp thing I ever heard him say of any friend, 'I had not the curiosity to ask what I was to be.'"[1]

Melville tried again, but Pitt declined to accept his proposals. A personal interview took place between Pitt and the Premier, but without effect; and it was not till May 1804 that Addington, whose majority was rapidly decreasing, retired with a good grace in favour of Pitt. In the new Cabinet Melville had a place as First Lord of the Admiralty.[2]

Lord Melville brought to the Admiralty those powers of administration which had proved so useful in the past. Having reason to believe that the state of the fleet was not satisfactory, he ordered returns of the number of ships of the line then in commission, together with a report on their state and condition. It was found that there were eighty-one ships available for service, a number which he did not consider sufficient. He then proceeded to inquire how many were being built. It turned out that the late Government had, from March 1801 till May 1804, ordered five ships to be built in the King's yards, and two in the merchants' yards. But the five which were to be built in the King's yards were not even begun; and the only information which the new Lord of the Admiralty could obtain about the other two was, that they were being built. Finding that there were neither hands nor proper materials in the King's yards, Melville advised making use of the merchants' yards. He was at once informed that, under the late Government, orders had been issued that men-of-war were not to be

[1] Life of Wilberforce, iii. 219.

[2] Mr. Pitt was First Lord of the Treasury and Chancellor of the Exchequer; Lord Eldon was Chancellor; Lord Hawkesbury was Home Secretary; Lord Harrowby was Foreign Secretary; and Lord Camden was Secretary for War and the Colonies.

built in the merchants' yards. Melville broke through this red-tape rule, and made use of the merchants' yards both for building and repairing. He ordered ten seventy-four gun ships to be built at once in the merchants' yards, and proceeded to put the King's yards on an efficient footing. The object he had in view was to make the fleet equal to what it had been during the late war; and the result of his efforts was a large increase in the number of vessels, and the infusion of a fresh spirit of activity into the royal naval works.[1]

While thus engaged in the work of his department the great misfortune of his life overtook Lord Melville. His zeal in the service of the Government rendered him more obnoxious than ever to the Opposition; and in the winter of 1805 the fortune of party warfare put into the hands of his enemies a weapon which they at once used without mercy.

In 1802 an Act had passed under which Commissioners were appointed to inquire into certain frauds and abuses which were said to exist in the Navy.[2] The Commissioners extended their inquiries back to the time when Lord Melville, then Mr. Dundas, was Treasurer of the Navy. Between May 1803 and November 1804 nine Reports were issued. These were of no public interest. But the Tenth Report, which dealt with the office of Treasurer of the Navy, was eagerly expected, for it was rumoured that in it the Commissioners would bring charges of a serious nature against Lord Melville. Melville himself kept silence. He did not even speak to Pitt on the subject till the report appeared.[3] In February 1805 the Tenth Report was printed. Wilberforce was in Pitt's room at the Treasury when the volume was brought to him. "I shall never," he says,

[1] Parl. Debates, v. 78-97. [2] 43 Geo. III. cap. 16.
[3] Wilberforce's Diary, 29th March 1805.

"forget the way in which he seized it, and how eagerly he looked into the leaves, without waiting even to cut them open."

The Report gave rise to suspicions against Lord Melville. It appeared that he had permitted Alexander Trotter, his paymaster, to pay into his own account at Coutts' sums of money taken from the public revenue. The Commissioners had examined Lord Melville in person, and had asked him whether he had advanced any of the money applicable to naval services for any other public service than that of the navy? This question Lord Melville declined to answer, pleading the fifth clause of the Act appointing the Commissioners, by which no man was obliged to criminate himself. A second question was then put, "Did Trotter ever lay out any public money for your private advantage?" Lord Melville's answer was that from the way in which the accounts were kept by Trotter it was impossible to answer the question. But he wrote a letter to the Commissioners, in which he reminded them that while Treasurer of the Navy he had held other confidential positions. "So situated," he said, "I did not decline giving accommodation from the funds in the Treasurer's hands to other services not connected with my official situation as Treasurer of the Navy."[1] Trotter, when examined, was so cautious that very little information was obtained from him; and Lord Melville absolutely declined to tell the Commissioners for what purposes he had accommodated other services, on the ground that he could not do so "without disclosing delicate and confidential transactions of Government."

The Report caused a great sensation, and was at once the talk of every club and dinner-table. The King, who never liked Melville, was much pleased, and asked every one,

[1] Tenth Report of the Commissioners of Naval Inquiry, Cobbett's Parl. Debates, iii. 1147-1212.

"Have you seen the Tenth Report? the Tenth Report?"[1] The members of the Opposition were delighted. Among the supporters of Government, too, there was some chuckling, for many, among others Addington, now Lord Sidmouth, had grown jealous of Dundas. Samuel Whitbread, now almost in the front rank of the Opposition, took the lead, and gave notice that he would call the attention of the House to the Tenth Report.

Pitt determined, at whatever cost, to defend Melville. Some of his friends, notably Wilberforce, begged him to leave the First Lord of the Admiralty to defend himself, but failed to persuade him.[2] Lord Sidmouth differed from the Prime Minister, and told him that he would resign if Government was committed to support Melville. Pitt replied that if Lord Sidmouth and his friends united to support a vote of censure on the First Lord of the Admiralty, the vote would be carried and the Government would be destroyed.[3] Lord Sidmouth suggested that the inquiry into Lord Melville's conduct should be referred to a Committee. "This," he said, "would make Lord Melville's fall, if he was to fall, the work of other hands, and not Mr. Pitt's own act." Other members of the Government, including Lord Melville himself, were consulted, and it was agreed that, instead of directly opposing Whitbread's vote of censure, Pitt should move for a Committee of Investigation.

On the 8th of April 1805 Mr. Whitbread, in a speech of more than three hours, called attention to the Tenth Report, and endeavoured to show that Lord Melville, when Treasurer of the Navy, had applied public money to other uses than those of the navy; that he had connived at a system of peculation in an individual for whose conduct he was responsible;

[1] Life of Lord Campbell, i. 165. [2] Stanhope, Life of Pitt, iii. 310.
[3] Diary of Lord Colchester, i. 547.

and that he had himself taken part in this system of peculation. He concluded by moving eleven resolutions, which set forth the case against Lord Melville, and censured him as being guilty of a gross violation of the law and a high breach of duty.[1]

Pitt rose as Whitbread ended, and, without expressing an opinion as to the guilt or innocence of Melville, moved the previous question, intimating, at the same time, that if the previous question were carried, he would then propose that the Tenth Report be remitted to a Select Committee of the House "to examine the matter thereof, and report the same to the House." So prejudiced were some members, among whom were Fox and Ponsonby, that they pressed for the punishment of Lord Melville without any other evidence than the Report. Others, one of whom was Canning, advised caution and constitutional procedure. It was one of those rare occasions on which members are influenced by the speeches to which they listen. Far on into the night the debate lasted. At length Wilberforce made up his mind to speak; and his moral weight made every word he uttered of vital importance. "He sat," it is said, "upon the continuation of the Treasury bench, and as he turned towards the Chair, looked just across Mr. Pitt, who was watching with intense earnestness to catch the first intimation of the line which he would take. It required no little effort to resist the fascination of that penetrating eye, from which Lord Erskine was always thought to shrink." He at once stated that he must support the vote of censure. Having given his reasons, he concluded by saying, "It is not only Lord Melville, but we ourselves that are upon our trial, and a fearful trial it is. If we shrink from it, we shall hereafter have reason to repent of our conduct. The House is now appealed to as the constitutional guardian of the rights of

[1] Parl. Debates, iv. 255-278.

the people, and I should ill discharge my duty to the public, if I did not give my most cordial and sincere support to the present motion."[1]

No member from Scotland had hitherto spoken in the debate, but, as the division was being loudly demanded, Lord Archibald Hamilton, the Whig member for Lanarkshire, rose and briefly stated that he at least would vote against the Government. The House was cleared, and a division took place. In dead silence the numbers were read out. There had voted for the motion two hundred and sixteen, and for the amendment two hundred and sixteen. The numbers being equal, the issue was in the hands of the Speaker. In the Chair sat Charles Abbot, afterwards first Lord Colchester, who had been made Speaker on the retirement of Addington. He had, some weeks before, discussed with Wilberforce the charges against Melville, little thinking that his casting vote would be required. When he heard the numbers he turned white as a sheet. For ten minutes he sat in silence. Then, having briefly stated the reasons which governed his decision, he said, "I shall accordingly give my vote with the Ayes, and so the Ayes have it."[2]

From the ranks of the Opposition rose a yell of triumph. One member gave a view-halloo, and shouted, "We have killed the fox!" But when Pitt heard the fatal words his spirit failed him. The member who sat next him thus describes the scene: "Pitt immediately put on the little cocked hat that he was in the habit of wearing, when dressed for the evening, and jammed it deeply over his forehead, and I distinctly saw the tears trickling down his cheeks." It was five in the morning when the House rose. Pitt was terribly shaken. Some of his opponents had been heard to whisper coarsely, "Let 's see how Billy

[1] Parl. Debates, iv. 320.

[2] Diary of Lord Malmesbury, iv. 347; Diary of Lord Colchester, i. 548.

looks after it;" but his friends formed a circle round him, in which he moved, as if unconsciously, out of the House.[1]

Next day it was announced that Lord Melville had resigned his office of First Lord of the Admiralty. But the Opposition was not satisfied. Lord Melville, Whitbread declared, must be removed from all offices under the Crown. Trotter had been dismissed. This was not enough, said Whitbread, the Attorney-General should be instructed to proceed against both Lord Melville and Trotter for recovery of any profits which they had made by the use of public money. In the end he moved that an address should be presented to the King praying him to remove Lord Melville from his councils and presence for ever. But the House was not prepared to go so far without further inquiry. The motion was withdrawn; and it was agreed that the resolutions which had been adopted on the previous day should be laid before his Majesty.

After the Easter recess Whitbread continued his attack on Melville, and asked the Prime Minister if he would advise his Majesty to dismiss Lord Melville from the Privy Council. Pitt said he did not intend to do so. Whitbread thereupon gave notice that, on a future day, he would move for the dismissal of Melville, and proposed that in the meantime the Tenth Report should be remitted to a Select Committee. To this Pitt agreed; and a Committee was afterwards appointed.

Pitt was firm in his resolution to stand by Melville.[2] He would certainly have gone to a division, and would probably have been defeated; but Lord Melville himself came to the rescue, and advised him to yield. "I will

[1] Diary of Lord Malmesbury, iv. 347. In his diary of 9th April 1805, the Speaker says that Lord Sidmouth told him that Mr. Pitt had written to the King that "the Speaker had necessarily voted for the question." "Mr. Pitt," he adds, "had acknowledged the propriety of my conduct, and so had Robert Dundas, Lord Melville's son." Colchester's Diary, i. 549.

[2] Stanhope, Life of Pitt, iii. 322.

not," Lord Melville wrote, "disguise from you that this opinion is not altogether free from considerations of a personal nature. I trust I have fortitude enough to enable me to bear up against any wrong, but you are enough acquainted with the interior of my family to know how galling it must be to every domestic feeling I have to witness the unremitting distress and agitation which those debates, so full of personal asperity, must naturally produce on those most nearly connected with me." Pitt laid the matter before the King, who wrote to him as follows:— "Though the King is much hurt at the virulence against Lord Melville, which is unbecoming the character of Englishmen, who, naturally, when a man is fallen, are too noble to pursue their blows, he must feel the prudence and good temper of Mr. Pitt's proposing his being struck out of the Privy Council, and it is hoped after that the subject will be buried in oblivion."[1]

On the 6th of May Whitbread rose to move an address for the removal of Melville from the Privy Council. Pitt interrupted him with a request for leave to make a communication to the House.[2] Whitbread knew perfectly well what was coming, but refused to forego the pleasure of delivering the oration which he had prepared. When he sat down Pitt announced that he had felt it his duty to advise the erasure of Lord Melville's name from the list of Privy Councillors. It gave him, he said, with quivering lip, a deep pang to do so.[3] After a short debate, Whitbread withdrew his motion.[4]

Towards the end of May the Report of the Select Com-

[1] Stanhope, Life of Pitt, iii. 443. [2] Parl. Debates, iv. 600, 601.

[3] Macaulay's Memoir of Pitt.

[4] In the course of the debate the Secretary at War, Mr. William Dundas, Lord Melville's nephew, made an imprudent attack on Mr. Fox, whose father he accused of making profit, when paymaster, out of the public money, and using it to defray his son's gambling debts. Parl. Debates, iv. 608.

mittee on the Tenth Report was laid on the table of the House of Commons. It was unfavourable to Lord Melville; and Whitbread at once gave notice that he would, as soon as members had had time to consider the Report, move for an impeachment.

The 11th of June was fixed for Mr. Whitbread's motion for an impeachment. On that day the Speaker informed the House that he had received a letter from Lord Melville requesting to be admitted and heard in his own defence.[1] Mr. Robert Dundas, Lord Melville's eldest son, who was member for Midlothian, then moved that his father, who was in waiting, should be admitted to the House. This was agreed to unanimously; and the Speaker ordered the sergeant-at-arms to attend with the mace at the door, and inform Lord Melville that he might come in. Lord Melville then entered. A chair had been placed within the bar; and the Speaker said, "There is a chair for your Lordship to repose on." Lord Melville sat down for a few moments, and then rose to defend himself.[2] "Hitherto," he said, "every attempt I have made to be heard in explanation or vindication of my own conduct and character, brought in question by the Tenth Report of the Commissioners of Naval Inquiry, has been in vain; and therefore it is my earliest duty to make my acknowledgment to this House, for that privilege having been at last conceded to me." Having read a correspondence between himself and the Naval Commissioners, which showed that they had refused to re-examine him, or to add to their Report, he went into the charges against him. He denied that he had ever authorised Mr. Trotter, his paymaster, to take public money from the bank and invest it into cheque bills, or lend it on security of stocks, or use it in discounting private bills, or

[1] Parl. Debates, v. 249; Diary of Lord Colchester, ii. 7.
[2] Parl. Debates, v. 249.

to buy India stock. "Upon this charge I must," he said, "in truth and justice to myself, solemnly assert before this House, and in the face of my country, that it is erroneous in every particular." He explained that Trotter, while in a subordinate position, attracted his notice by his zeal in pointing out the means which were used to deprive seamen and their families of the full amount of what they were justly entitled to, and that, on the death of the paymaster, he had promoted him to the vacant post. This brought him into a position in which he had been employed in many pieces of business of a confidential character. He said all he could for Trotter, and gave an instance of his own sturdy courage when he declared that, however some parts of his conduct might have caused him anxiety, "I shall never refuse to him the justice of acknowledging that, under his management, the pay office of the navy was conducted, for a period of fourteen years, without one payment being a moment delayed at the Treasurer's office, and an account of not less than £134,000,000 sterling has been closed, without the loss of one farthing having arisen to the public during the whole of that period."[1]

He finished a long speech with these words: "I despair not, even in my own time, to receive ample justice from my deluded country. This is, however, not the period to enter upon that theme. But I feel the consciousness of my own rectitude deeply implanted in my breast, and I shall descend to my grave with the heartfelt satisfaction that, however the shafts of severity and cruelty may be levelled against me at the present moment, the future impartial historian will be able to hand down my name in the list of those who have strenuously, and, I hope, not ineffectually exerted, during a long life of public service, their unremitting endeavours to promote the welfare and the dearest and most essential

[1] Parl. Debates, v. 257.

interests of their country." He then bowed respectfully to the House, took up his hat and papers, and withdrew.[1]

Whitbread at once rose, and, in a lengthy speech, moved, "That Henry Lord Viscount Melville be impeached of high crimes and misdemeanours." Some curious proceedings followed. Mr. Bond moved as an amendment that the Attorney-General be directed to prosecute Lord Melville criminally. There was a long debate, which lasted till three o'clock on the following morning, when the House rose. The discussion was renewed at the next sitting, and continued all night till the morning of Thursday the 13th, when the House divided, and Mr. Whitbread's motion for an impeachment was lost by a majority of seventy-seven. The house then divided on Mr. Bond's amendment in favour of a criminal prosecution, which was carried by a majority of nine. The House adjourned at six A.M.

But Lord Melville's friends thought that an impeachment would be safer than a criminal prosecution before Lord Ellenborough and a jury; for they dreaded that the influence of Lord Sidmouth with the Chief-Justice would be used on the side of the prosecution.[2] Accordingly, on the 25th of June, Mr. Leycester moved that the House should proceed by impeachment, and that the Attorney-General be requested to stay the proceedings in the prosecution he was directed, by the order of the 13th of June, to institute against Melville. He supported this motion on the ground that, while in the House of Commons the usual mode of proceeding had been by information filed by the Attorney-General, there was only one precedent of proceedings against a peer of the realm except by impeachment. He also maintained that public feeling was so roused against Melville that he would not

[1] Parl. Debates, v. 249-289. On the effect produced by Lord Melville's speech see Colchester, ii. 8, and Life of Wilberforce, iii. 227.

[2] Lord Holland's Memoirs of the Whig Party, i. 204.

obtain justice if tried upon a criminal information. This motion was opposed on the ground that it rescinded a recent resolution of the House; and Fox moved that the other orders of the day be read. Mr. Robert Dundas supported the motion, and stated that, although a criminal prosecution had been spoken of as more lenient, his father wished an impeachment. The House divided on Mr. Fox's motion, which was defeated by a majority of twenty-three.[1] The motion for an impeachment was then agreed to.[2] Whitbread was directed to go before the Lords, impeach the late Treasurer of the Navy of high crimes and misdemeanours, and inform the peers that the Commons would, in due time, produce particular articles against him, and make good the same. This he did on the following day, attended by a large number of members.

During the remainder of the session the House, on different occasions, was occupied in adjusting matters relating to the management of the impeachment.

Just before the prorogation, which took place on the 12th of July, Pitt remonstrated with Lord Sidmouth, whose friends had some time ago deserted Lord Melville. The explanations which followed ended in the resignation of Lord Sidmouth. This new annoyance, added to the chagrin caused by the proceedings in Lord Melville's case, had injured the Premier's health. Then came the news of Austerlitz. Under that he sank. In December he was at Bath, where Lord Melville saw him, and where they had their last conference on State affairs.[3] They never met again. At the beginning

[1] Ayes, 143; Noes, 166. Parl. Debates, v. 615.

[2] The Addington, Fox, and Grenville parties voted together against rescinding the former resolution for a criminal prosecution. Colchester, ii. 12; Life of Lord Sidmouth, ii. 369.

[3] "When Mr. Pitt at Bath showed me the distribution of the fleet, I pointed out to him the deficiency; he told me he would have it remedied the moment he went to town—but alas!" Melville to Lord Castlereagh, 25th March 1806, Castlereagh Despatches, viii. 45.

of the following year Pitt left Bath, and went to his villa at Putney. When Parliament re-assembled, on the 21st of January, he was on his death-bed. Two days later he died; and before his funeral was over politicians were watching the formation of Lord Grenville's Ministry of "All the Talents." The preparations for the trial went on; and on the 29th of April all was ready.

At ten o'clock on the morning of the 29th of April the Commons met in their own chamber. The managers left the House first, and took the places which were assigned to them in Westminster Hall. When they had gone, the Speaker went and stood at the bar, and the members moved out, bowing as they passed him. At eleven o'clock the Lords appeared in the Hall, marching to their places in procession. As the last of the peers were entering, Lord Melville came in from behind the bar, in full dress, but without his robes, and sat down on a bench in front of his counsel.[1] The articles of impeachment and the answer of the accused were read; and Whitbread opened the case for the prosecution in a speech which occupied the remainder of the day. The next nine days were spent in hearing evidence in support of the impeachment; and then the Solicitor-General summed up the case on behalf of the Commons in a speech of more than three hours.[2] "I never knew," the future Lord Chancellor Campbell wrote to his father on the day after Romilly's speech, "what earthly magnificence was till yesterday, when I was present at Lord Melville's trial. Ye gods! the peeresses' box! A glory seemed to play round their countenances, and to shoot in vivid flashes to the extremities of the Hall. The general opinion now is that his Lordship will be acquitted."[3] Romilly was followed

[1] Diary of Lord Colchester, ii. 53, 54. Lord Melville's counsel were Mr. Plumer, afterwards Master of the Rolls, Mr. Adam, afterwards Lord Chief Commissioner of the Jury Court of Scotland, and Mr. Hobhouse.

[2] Memoirs of Romilly, ii. 139. [3] Life of Lord Campbell, i. 182.

by Plumer, who opened for the defence. Mr. Adam, the Attorney-General, and Whitbread also spoke, and on the 17th of May, the fifteenth day of the trial, the Court adjourned till the 12th of June. On that day the peers re-assembled to give judgment. "Your Lordships," said the Chancellor, "having fully heard and considered of the evidence and the arguments in this case, have agreed upon several questions, which are severally to be put to your Lordships; and the first question is this, Is Henry Viscount Melville guilty of the high crimes and misdemeanours charged upon him in the First Article of the Impeachment? John Lord Crewe, what says your Lordship on this First Article?" Lord Crewe, the junior baron, rose, and, laying his right hand upon his breast, answered, "Not guilty, upon my honour." In like manner the question was put to each peer, and each answered, "Guilty" or "Not guilty." One hundred and thirty-five peers voted, of whom the last was the Lord Chancellor, who said, "And I, Thomas Lord Erskine, am of opinion that Henry Viscount Melville is not guilty of this First Article of the Impeachment, upon my honour." The other Articles having been voted on, the Chancellor announced that a majority of the Lords had acquitted the accused; and then addressing Lord Melville he said, "I am to acquaint your Lordship that you are acquitted of the Articles of Impeachment exhibited against you by the Commons, and of all things contained therein." Lord Melville made a low bow and retired; the peers returned to their House; and the trial was at an end.[1]

The question of Lord Melville's guilt or innocence is of little interest now. Every word of the evidence is recorded,

[1] State Trials, xxix. 549-1482. On the ten charges against Lord Melville the majorities in favour of an acquittal varied from twenty-seven to one hundred and twenty-eight. One one charge (the fifth) only three peers, Lord Ellenborough, Lord Fife, and Lord Stanhope voted for a conviction. On the fourth charge the acquittal was unanimous.

and any one can form his own opinion on the subject. The case for the prosecution was certainly strong on two of the ten charges. These were the second and third articles, which accused Lord Melville of conniving at the conduct of Trotter in withdrawing money from the official account in the Bank of England for other purposes than the public service, and making a profit out of such transactions.[1] But it was admitted at the time, by persons who bore no good-will to Lord Melville, that he had not himself embezzled any of the public money. His conduct towards those who had taken part against him was generous and free from all malice. "We did not meet for a long time," says Wilberforce, whose speech in the House of Commons had been so fatal to Lord Melville, "and all his connections most violently abused me. About a year before he died, we met in the stone passage which leads from the Horse Guards to the Treasury. We came suddenly upon each other, just in the open part, where the light struck upon our faces. We saw one another, and at first I thought he was passing on, but he stopped and called out, 'Ah, Wilberforce, how do you do?' and gave me a hearty shake by the hand. I would have given a thousand pounds for that shake. I never saw him again."[2]

Soon after his acquittal Lord Melville reappeared in public life; and Lord Holland expresses the opinion that, "had the Whig Ministry lasted long enough for the impression of his trial to wear away, and for him to determine his plan of operation, they would have found him, even with his shattered constitution and broken reputation, a very formidable opponent. But the proceedings against him were yet fresh in public recollection when Lord Grenville's Administration was overthrown."

The Duke of Portland, who had left the Whig party

[1] State Trials, xxix. 616-615. [2] Life of Wilberforce, iii. 229, 230.

during the French Revolution, became First Lord of the Treasury on the downfall of Grenville in 1807. He appointed Mr. Robert Dundas, Lord Melville's eldest son, President of the Board of Control; and soon after Lord Melville was again sworn of the Privy Council. This was deeply resented by the Opposition; and Sir Samuel Romilly went so far as to declare in the House of Commons that Ministers incurred a heavy responsibility in advising the King to summon to his Councils a man who, whenever he took his seat among the peers of England, "must hear the words, 'Guilty, upon my honour,' ringing in his ears."[1] Although he was thus restored to the position of a Privy Councillor, Lord Melville was never again in office; but until his death he continued to correspond on public questions and give his advice on matters connected with the Navy and the affairs of India, with regard to which his opinion was often asked. His health, however, was at last failing, and he was not able for much writing. In a letter to Lord Castlereagh on the subject of the war he says: "Many other topics crowd in upon me in the contemplation of this subject, on which I wish to enlarge. Indeed, the discussion is endless, but I feel myself exhausted, and my head oppressed, so that I am under the necessity of stopping."[2]

In May 1811 he was in Edinburgh, where he was the guest of his nephew, Lord Chief Baron Dundas. While attending the General Assembly, and apparently in his usual state of health, he was shocked to hear of the sudden death of his kinsman, Robert Blair of Avontoun, who at that

[1] Memoirs of Romilly, ii. 196. "My speech," says Romilly, "was a very bad one, and was by no means favourably received by the House. I felt mortified and chagrined to the utmost degree. . . . One or two expressions in my speech, which I think were very foolish, have haunted my memory ever since I sat down. It will be long, I think, before I shall venture to speak again."

[2] Castlereagh Despatches, vii. 448.

time was President of the Court of Session. The funeral was fixed for the 28th. The President's house was next door to that of the Chief Baron. On the evening of the 27th Lord Melville was much agitated, and said that he anticipated with dread the ceremonial of the next day. He went to his room early, and spent some time alone writing letters. One letter was to the Lord President's widow, describing the emotions with which he expected to witness the funeral of her husband; another was to Perceval, recommending his family to the Minister's care. Oppressed with melancholy reflections he went to bed. Next morning—it was the anniversary of Pitt's birthday—he did not appear at his usual hour. His servant went to the door of his room and knocked. Receiving no answer, he went in, and found Lord Melville lying dead in an attitude of quiet sleep.

He was buried privately in the parish churchyard of Lasswade. But three monuments have since been erected to his memory. One is in the Parliament House, the scene of his early success; another is a lofty column, in St. Andrew Square in Edinburgh, which was built out of funds contributed by officers and seamen of the Royal Navy, as a testimonial of their admiration and gratitude for his services on their behalf; and a third stands on a picturesque eminence overlooking that fertile district of Perthshire in which lies Dunira, where he often lived during the closing years of his life.

Lord Melville had been for nearly thirty years the most powerful man in Scotland. "I have seen," said Sir Walter Scott, "when the streets of Edinburgh were thought by the inhabitants almost too vulgar for Lord Melville to walk upon." He had not only great political power, but he was personally beloved. His genial manner won the hearts of

all who met him. He was known to be a thorough Scotsman. The very tones of his voice were in his favour. Wedderburn had carefully cultivated an English accent, as Jeffrey afterwards did. It was the fashion to "speak English;" and at the time when Dundas was just entering public life a number of gentlemen in Edinburgh had attended lectures, given by an Englishman, for the purpose of acquiring an English accent. But Dundas spoke broadly, and gloried in doing so. In a number of ways he had been able to gratify various classes in Scotland. The restoration of the forfeited estates, the repeal of the Act forbidding the use of the Highland dress, the establishment of the Antiquarian Society, the increase in the number of royal chaplains, were all his doing. He had at his disposal, not only the whole patronage of Scotland, but also an immense amount of Indian patronage; and he was always ready to help a Scotsman, sometimes even if he came wearing the buff and blue livery of the Whigs. A man of less ability might easily have lost his hold on the people of Scotland. For, during many years, he lived chiefly in England, and only visited Scotland for a few months at a time. He was surrounded by political wire-pullers, and expectant placemen, who doubtless represented to him, for their own purposes, that certain measures were desirable, or, dazzled by his high position, had not the courage to differ from him when he was in danger of taking a false step. But Lord Melville was independent of these dangerous advisers. He mingled with all classes, and formed his own opinions from what he heard and saw. "As one little trait," says Lockhart, "illustrative of Lord Melville's manner of conducting himself to the people of Scotland, I may mention, that to the latest period of his life, whenever he came to Edinburgh, he made a point of calling in person on all the old ladies with whom he had been acquainted in the days of his youth. He might be seen going about, and

climbing up to the most aërial *habitacula* of ancient maidens and widows; and it is probable he gained more by this than he could have gained by almost any other thing, even in the good opinion of people who might themselves be vainly desirous of having an interview with the great statesman."[1]

In the distribution of patronage Lord Melville certainly gave the preference to those of his own side, and rewarded political services in accordance with the necessary rules of party government. But his official correspondence, from the time he became Lord Advocate until the disaster of 1806, proves that he resolutely declined to sacrifice the public interest to the private solicitations of his friends. The following letters are an example of his firmness in repelling influences of a kind which it is always peculiarly difficult to resist. The Countess of Sutherland, writing in July 1793, addressed him as follows: "I meant to have saved you the trouble of reading this Letter, by stating the subject of it in conversation, but as you have not many idle moments, and as I am on the Eve of my departure for Sutherland, give me leave to mention, as a sort of dying speech, an application that L^d^ Gower and myself are desirous of making, both on our own account, and of that of many People in Sutherland from whom we have of late (and indeed formerly) had frequent applications, and very pressing ones, on this subject. It is to get the Sherifdom of Sutherland and Caithness divided; they are at present united in the Person of a Mr. Thrale of the Orkneys, who, to the great greivance of the Inhabitants, never visits Sutherland, nor even commits the deputations of his Office to any of the inhabitants, but to People with whom it is unconnected, the Sherif being also of consequence in Elections, this *foreigner* may be inconvenient in many ways,

[1] Peter's Letters to his Kinsfolk (3d ed.), ii. 38.

but of this you are more competent to judge than I am to inform you.

"The Prayer of my petition is, that Sutherland may be allowed a Sherif for itself on the same footing with most other of the Scotch Counties, and unconnected with Caithness; there is a precedent for such a separation having taken place in the Island of Bute. I c^{d} say a great deal more if I reported half of what has has been stated to me on the subject, but as you have not much time for a detail on so very uninteresting a subject to everybody excepting the inhabitants of that 'one corner of the vineyard' (as the Ministers express it), I am sure you will think I have already said enough, and I trust to your good nature and kindness to me to grant my request if it can be done, which I hope is the case."

Dundas at once replied: "My dear Lady Sutherland,—I have the Honor of your Ladyship's Letter, and shall very distinctly state to you how the matter stands with regard to the Request you make. There certainly is no good reason why the Sheriffships of Caithness and Sutherland should be united together, and I have no difficulty of advising them to be separated, but when I say this it must be carried into execution upon Public Grounds, for if it is made a matter of patronage, in place of being a benefit to the County it will be the reverse. It is become too much the custom, even in the low lands, to appoint the Sheriffs from local Considerations, and perhaps the practice is not attended with much Inconvenience, from the circumstance of their being at hand and immediately under the Eye of the Heads of the Law and the Courts of Judicature, and besides the manners of the Inhabitants of the low Countries are not such as to produce either the good or bad effects which result from that strength of attachment which prevails in the more remote Counties of Scotland. I am no Enemy, but very much the reverse, to the

principles and consequences of Clanship, but if there is any Situation in which it ought never to appear it is in the distribution of Justice. From what I have said your Ladyship will have no difficulty in understanding the Conclusion I draw from what I have stated. If you wish me truly to appoint a Gentleman qualified in terms of Law to discharge with fidelity the duties of a Sheriff in all his various Capacities, the doing so will be a most salutary measure for the Public Service and highly beneficial to the Interests of the County of Sutherland, but if those who have suggested the Measure to you have any disposition or expectation that I should name a Person connected with the local or political Interests of the County; or embarrassed in any degree by its local attachments, your Ladyship may take my word for it, the Measure is one you should not wish for. He may at a particular moment be subservient to your local or political views, but he will neither be a good Judge to decide on the Property of the People resident in the County, nor will he be a good Magistrate to discharge the Duties which he owes to the Publick."[1]

But his chief source of power was the hold which he had over the representation of Scotland. He was the great election agent for Government in Scotland. Peers and members of the House of Commons were alike his nominees.[2] It was he who prepared the list of representative peers, which, in accordance with the custom of those days, was sent down from London and meekly accepted by the nobles who met in Holyrood at each general election. As for the House of

[1] Copy of a letter from Mr. Secretary Dundas to the Countess of Sutherland, dated Wimbledon, 2d July 1793, Scot. MSS. Record Office.

[2] "Our friend Dundas was violently attacked and rather overmatched for a day, but he returned to the charge and is ready to fight another day. Upon the whole Mr. Pitt has never had such a push made against him; it was thought necessary to call in the outposts, *and the auxiliary troops were brought from Scotland.*" General Grant to Lord Cornwallis, 6th April 1788, Cornwallis Correspondence, i. 374.

Commons, a consideration of the small number of persons who had the franchise explains the ease with which the elections were controlled. At the general election of 1790, when the power of Dundas was at its height, the number of county voters in Scotland was two thousand six hundred and twenty-four. The largest constituency was that of Ayrshire, which numbered two hundred and twenty. The smallest was that of Cromarty, which numbered only six. Midlothian, the "premier county," contained ninety-six voters. The general election created little excitement. In Midlothian, which returned the Lord Advocate, Robert Dundas, and in twenty other counties, there was no contest. In nine counties there were contested elections, at which only three hundred and eighty-nine electors voted in all.[1] The largest poll was in Perthshire, where one hundred and six persons, out of a constituency of one hundred and forty-five, recorded their votes. The smallest was in Cromarty, where the whole constituency, numbering six, voted. The counties of Bute, Clackmannan, and Nairn had an alternate election with Caithness, Kinross, and Cromarty; and, it not being their turn in that year, these counties were not represented in the Parliament chosen in 1790.[2]

The total number of burgh electors in Scotland was twelve hundred and eighty-nine. The largest constituencies were those of Edinburgh, Glasgow, and Selkirk, which had each thirty-three voters; but the average constituency numbered about nineteen. Edinburgh alone had a member for itself. The other royal burghs of Scotland were arranged in fourteen groups or districts, and each district returned one member to Parliament. The electors were the town councillors of the various burghs. They appointed delegates.

[1] The contested counties were Dumfries, Stirling, Perth, Linlithgow, Roxburgh, Renfrew, Cromarty, Sutherland, and Orkney.

[2] The number of electors in these counties was, in Bute, twelve; in Clackmannan, sixteen; and in Nairn, twenty.

The delegates met at the head burgh of the district, and chose the member. In 1790 there were contested elections in seven of the fourteen districts. For Edinburgh Henry Dundas was himself returned without opposition.

These small burgh constituencies were easily managed; for the immense patronage which Dundas possessed made the councillors of every town in Scotland ready to do his bidding. In the counties he was equally powerful. There the limited character of the franchise, which was in the hands of the freeholders alone, led to the manufacture of votes, either for party purposes, or in order to increase the personal influence of the landowners. This system of creating votes was the great scandal of the electoral system in the Scottish counties during the eighteenth century. Although the largest landowner in a county could only have one vote, yet by dividing his property into parcels he could enfranchise persons whose votes were practically his own. The value of political influence led to a system of manufacturing votes, the result of which was that the real freeholders were swamped by the parchment voters. The evil was of long standing. The earliest method of making votes was by conveying, *in trust only*, a piece of land to the voter. This process gave a vote, but reserved to the proprietor the right of redeeming the property conveyed. The abuses arising from these trust qualifications led, in 1712, to the passing of an Act which proceeded on the preamble that conveyances of land had been made in trust, on purpose to create and multiply votes contrary to the true intention of the election laws. It was therefore ordained that no such qualifications should, in future, confer the right to vote in any election, and that any freeholder, whose qualification was challenged, must take an oath that he did not hold it in trust. The effect of this Statute was to stop the creation of trust qualifications. But the influence derived from the possession of

votes was too valuable not to be acquired, if legal ingenuity could devise a means of eluding the trust oath. Such a means was soon found. No trust was created; but by an intricate legal process, which cannot be explained in popular language, matters were so arranged that a bare right of voting was created and given to persons who had no actual right of ownership in the land on account of which they voted.[1] These qualifications were perfectly worthless, except for the fact that they gave a vote. But there was no document to show the fictitious nature of the transaction; and such a vote was perfectly legal. In order to baffle this new device an Act was passed in 1733, when Duncan Forbes was Lord Advocate, by which a new form of oath was prescribed. In taking this oath the freeholder had to swear that the qualification, on which he claimed to vote, was his own proper estate, and that his title was neither nominal, fictitious, *nor created to enable him to vote for a member of Parliament.* It was expected that this enactment would put an end to fictitious votes; but in course of time it became the custom for all voters to take the oath when challenged. So inadequate had all legislation proved that, within fifty years after the passing of the Act of 1733, the county constituencies were completely swamped by the voters who had been enfranchised by the great owners of land.[2]

Public feeling was so strong against the "parchment barons," that, after the general election of 1784, a prosecution for perjury, in taking the oath, was raised against certain freeholders of Elgin and Forres by some of the genuine voters. To this prosecution the Lord Advocate gave his concurrence. The extent to which the system of

[1] Bell, Treatise on the Election Laws, 276.

[2] *Ibid.* "In the county of Moray," says Mr. Bell, "the nominal freeholders, or parchment barons, as they were styled, were to the real freeholders in the proportion of four to one."

creating voting qualifications prevailed may be gathered from the written argument for the accused. "There is not," it was said, "a person of any consideration in Scotland, who has not a son, or a brother, or a friend, in the same predicament with the pannel, and who, if the doctrine of the prosecutor be well founded, may not be brought to trial for perjury in this Court, at any time within twenty years from the period at which he took the oath, and that, too, at the instance of any one freeholder in the county." The jury acquitted the accused; and the judges found the prosecutors liable in expenses.[1]

Important discussions were raised in the Court of Session as to whether it was competent to put questions to a person claiming to vote, in order to discover whether his qualification was fictitious. The leading case was Forbes against Macpherson, in which the judgment of the Court of Session, holding it incompetent, was reversed by the House of Lords.[2] The House of Lords having thus decided that the oath was not the only means of finding out the character of a qualification, the system of questioning persons who had acquired qualifications was adopted by the judges in Scotland; and when these persons acknowledged that their qualifications had been created for party purposes, their names were expunged from the roll of freeholders.[3] But the creation of parchment votes continued common until the passing of the Reform Bill of 1832. The county franchise was, by such means, controlled by a few persons, most of whom supported the Ministry. The town councillors, who alone had the right of voting for the burgh members, were self-elected. Lord Melville's talents and popularity made his influence supreme in the constituencies; and the result of his electoral

[1] Bell, Treatise on the Election Laws, 280-282.

[2] 6th March 1789, Morison, Dictionary of Decisions, 8769 (House of Lords, 9th April 1790); Bell, Treatise on the Election Laws, 294.

[3] Morison, 8770, 8771. On the whole of this subject see Bell, 274-335.

management was that for a number of years only two Whig members were returned from Scotland.

On one point Lord Melville and his followers made a grave blunder. About the year 1782 the question of Burgh Reform was raised, and the way in which it was treated produced a state of feeling which ultimately destroyed the ruling party in Scotland. The policy of Government on this question was a profound error. The state of the case was clear. Grievances were known to exist. They could not be denied. Had Burgh Reform been granted, some confidence in the Ministers would have remained. But their policy was a persistent refusal of all change. The opposition to Parliamentary Reform was intelligible from certain points of view. Plausible arguments could be stated against it. But to defend the management of burghs by self-elected magistrates, who refused the burgesses any control over their own money, was impossible. If the leaders of the Tory party had alienated either the working class, or the commercial class, or the professional class, they might have retained some influence in Scotland. But by their opposition to Burgh Reform they alienated all classes of the people. The working men and the vast majority of the middle class became supporters of the Opposition. The alienation began in 1782, when the inhabitants of the burghs were refused any control over the expenditure of the burgh funds or any voice in the election of the magistrates. Now, after the lapse of a century, it seems to be as complete as ever; and it remains to be seen whether the pliant Conservatism of to-day will regain what was lost by the unbending Toryism of a former generation.

CHAPTER XV.

HENRY ERSKINE AND ILAY CAMPBELL.

ACCORDING to an old Parliament House story, Henry Dundas, soon after the Coalition Ministry had removed him from the place of Lord Advocate, offered to his successor the use of his silk gown. "Thank you," was the reply, "but it shall never be said of Harry Erskine that he adopted the abandoned habits of his predecessor!" The new Lord Advocate, who is said to have made this witty answer, was the Honourable Henry Erskine, second son of the tenth Earl of Buchan. He was born on the 1st of November 1746, was educated at St. Andrews, Glasgow, and Edinburgh, and was called to the bar of Scotland on the 20th of February 1768.

Erskine, with his tall lithe figure, handsome face, and graceful bearing, adorned the Parliament House for more than forty years. So brilliant a speaker had not been heard at the Scottish bar since the days of Sir George Mackenzie. He had many of the gifts which made his famous brother the idol of every circuit town in England. His clear full voice, his fascinating manner, his polished language, his close reasoning, and his sound judgment, gained the applause of that critical society which assembled every morning under the oaken roof of the Parliament House. He was a wit, he made good jokes, and he told good stories. But at the bar, we are told by Lord Jeffrey,

"all his wit was argument, and each of his delightful illustrations a material step in his reasoning." The favourite proverb of the dull, that still waters run deep, was never more clearly disproved than by Henry Erskine. His gay manner and sparkling sayings were on the surface. Beneath lay deep feelings, firm convictions, and a strong sense of public duty. The path to office lay open before him if he had chosen to suppress his political sympathies and join the Tory party; but during the long period of nearly half a century of public life, through good report and bad report, Erskine was firm in his allegiance to the Whigs.

When the Coalition Ministry was formed in April 1783, Lord Advocate Dundas remained in office, declaring that no man in Scotland was bold enough to take his place. But, four months later, he was removed, and the Duke of Portland bestowed the vacant office on Erskine. "I am convinced," wrote Mr. Adam to the new Lord Advocate, "that the present Government has not done a wiser thing since their appointment than removing the late Lord Advocate, except appointing the present."[1]

The speedy downfall of the Coalition Ministry put an end to Erskine's term of office. He was appointed in August 1783, and he was out of office in December.

When Parliament met after the Christmas recess a debate took place in the House of Commons in which it was mentioned that the Coalition Ministry was accused of having attempted to bribe Scottish members. A sum of five hundred pounds, it was said, had been intrusted to Lord Advocate Erskine for the purpose of inducing Scottish members to go up to London and support the Government. But Dundas, according to the Parliamentary reporter, "very handsomely vindicated the political integrity of the late Lord Advocate. He said he was incapable of being prosti-

[1] Fergusson, Life of Erskine, 239.

tuted into the character of a distributor of the wages of corruption, and he was convinced that such a description of him had originated in misinformation."[1]

In March 1784 Parliament was dissolved; and the general election ended in the complete defeat of the Whig party, both in England and Scotland. Erskine did not serve the Crown again for twenty years. But a high honour was soon bestowed upon him. In December 1785 Henry Dundas, who had been Dean of the Faculty of Advocates for some time, called a special meeting of the bar and resigned. Erskine moved that the thanks of the bar be given to Dundas "for the honour he has done to the office of Dean." This was agreed to, and Dundas left the chair.

A few days after, the "anniversary meeting" of the Faculty was held, and Erskine was proposed for the Deanship. This honourable office had been, from time immemorial, bestowed on those who were popular on account either of distinguished professional success or of personal qualities which had endeared them to their brethren. There had been a general understanding that political differences were to be forgotten when a Dean was to be elected. But now a strong effort was made by some of the supporters of the Ministry to reject Erskine. "The utmost interest of Government," he said some years after, "was exerted to defeat my election, but the Faculty were free and independent. Their spirit resisted undue influence, and I was placed at your head by a decided majority."[2] It was on the 24th of December 1785 that Erskine was chosen Dean; and for the next ten years he was unanimously re-elected.

On the 29th of October 1795 the King, on his way to open Parliament, was mobbed in the streets of London. A crowd surrounded the state coach with cries of "Peace, peace!" "No war!" "Give us bread, and no Pitt!" "Down

[1] Parl. Hist. xxiv. 339-341. [2] Fergusson, Life of Erskine, 545.

with tyrants!" Stones were thrown, and one of the windows of the coach was broken. The King behaved at the time with perfect coolness; and, next night, went with the Queen and three of the Princes to Covent Garden Theatre. There he was received with loud cheers; and the National Anthem was sung three times amidst fervid expressions of loyalty. All over London and in the provinces there was anger at the outrage against his Majesty.

In Edinburgh, on the 17th of November, the Faculty of Advocates met, and unanimously agreed that an address should be presented to his Majesty "on his happy escape from the late outrages offered to his royal person." Dean of Faculty Erskine, the Lord Advocate, and two other members of the bar, were appointed to prepare the address. Next day the Faculty met; and Erskine read the address to the meeting. It was approved, and he was authorised to sign it, in the name of the bar, and send it to Mr. Henry Dundas to be presented to his Majesty. "Permit us," said the address, "with one voice to express those sentiments of detestation which we feel at the attack that was made upon your Majesty; and in this public manner to assure your Majesty of our affection to your Person, our attachment to your Family, and our readiness to sacrifice our fortunes and our lives in defence of a King whom we love and revere, and in support of a Constitution which we prize as the first of earthly blessings." Erskine signed this loyal address. It was his last important act as Dean of Faculty.[1]

Both in England and Scotland there were some, generally men rendered desperate by poverty, who looked forward to a revolution which might end in the destruction of the Monarchy; but the nation was at heart thoroughly loyal. The Government, however, determined to make the insults offered to the King an excuse for the introduction of measures

[1] Minutes of Faculty $\frac{1}{3}$th Nov., $\frac{9}{12}$th Dec. 1795.

which they hoped would crush the various political associations which had lately come into existence. Two bills were brought into Parliament, one "for the prevention of seditious meetings," and the other "for the safety and preservation of his Majesty's person and government against treasonable and seditious practices and attempts."[1] The attack on British freedom made by these notorious bills alarmed the leaders of the Whig party. In Edinburgh an effort was made to support the Opposition. A public meeting was held, on the 28th of November, in Sommer's Tavern. James Mansfield of Midmar, always a staunch Whig, was in the chair. The Dean of Faculty, seconded by William Ferguson of Raith, moved a series of resolutions, which, while expressing horror at the outrage on the King's person, declared that the meeting saw, with surprise and indignation, that it had been made the pretext for bringing in measures "which strike at the very foundation of the British Constitution." The war was condemned, and an opinion was expressed that nothing would tend so much as peace to put an end to all discontent among the people. Petitions against the bills, and in favour of peace, were adopted; and a Committee was appointed to further the objects of the meeting. On this Committee, of which Mr. Mansfield was chairman, Erskine consented to act.

The anniversary meeting of the Faculty of Advocates was at hand. For ten years Erskine had been chosen Dean; but now it was resolved by a few of the more active members of the Ministerial party to punish him for his opposition to Government. His distinguished career, his brilliant gifts, the credit which, for many years, he had done to the profession, were all forgotten. He had taken part in a political meeting of which his opponents did not approve, and he must be dismissed. Eight advocates, all supporters of Government,

[1] Parl. Hist. xxxii. 244-554.

canvassed the bar. Having satisfied themselves that they could command a majority, they issued a circular in which they proposed that Erskine should be rejected on account of his political conduct, and suggested the Lord Advocate as a suitable successor.[1] The eight advocates sent a copy of this circular to Erskine, who, in answer, claimed, in dignified terms, the right to exercise his independent judgment on political questions, and defended his recent conduct. "If such conduct," he said, "resulting from such motives, unfits me, in your opinion, any longer to fill the Chair of the Faculty, you will act as you see fit. If such shall be the opinion of the majority of my brethren; if they are determined that there shall no longer be amongst us freedom of political opinion; if party prejudice and violence are to usurp the place of moderation, of personal respect, and of private friendship,—I can only say that such was not the Faculty of Advocates when I was first honoured with the situation I now enjoy. To have received it was a high honour. I shall consider it as still a higher honour to lay it down. For, in my opinion, the highest honour that can be enjoyed by a virtuous mind is—the reflection of having allowed no personal consideration to stand between it and the firm, manly, and independent performance of public duty."[2]

The anniversary meeting took place on the 12th of January 1796. One hundred and twenty-three members of the bar voted for the Lord Advocate; thirty-eight voted for Erskine, who was thus rejected by a majority of eighty-five.

The leading opponents of Erskine were men of the highest personal honour; but they were blinded by party feeling. The Duke of Buccleuch, and other supporters of Government, pressed those of the junior bar over whom they had influence either to vote for the

[1] The eight advocates were John Pringle, Allan Maconochie, Neil Ferguson, Robert Craigie, Charles Hope, James Oswald, David Hume, and David Boyle.

[2] Fergusson, Life of Erskine, 546.

Lord Advocate or to remain neutral. Some even of the judges solicited votes against Erskine. The Tory members of the bar voted for the Lord Advocate unanimously. But the reaction was not long of coming. Soon the majority were ashamed to think they had yielded to party pressure and voted against "one of the most learned and best beloved men in the country."[1] Towards those of his personal friends who had voted against him Erskine showed no resentment. What had taken place has never again occurred in the history of the Faculty. No Dean who has faithfully discharged the duties of his office has been turned out for party reasons; and the election of a Dean is now regarded as unconnected with political considerations.

From 1796 onwards "The Independence of the Bar and Henry Erskine" was a favourite toast among the Whigs. Long after the affair of the Deanship, in 1820, when a public dinner was given to Lord Erskine on his return to Scotland after an absence of fifty years, the health was drunk of "the remaining individuals of that virtuous number of thirty-eight, the small but manly band of true patriots within the bosom of the Faculty of Advocates who stood firm in the support of the Honourable Henry Erskine, when he had opposed the unconstitutional and oppressive measures of the Minister of the day."[2]

In 1806 the Ministry of "All the Talents" was formed, and Erskine became Lord Advocate for the second time. In 1783 he had no seat in Parliament; but now he was elected for the Haddington burghs.[3] "In the spring of 1806," says his son, "my father brought his wife with him to London, and myself by way of Secretary. Mrs. Erskine

[1] This expression was used of Erskine in the House of Commons by Mr. Kinnaird. Parl. Debates, iv. 366.

[2] Fergusson, Life of Erskine, 550.

[3] 17th April 1806. Parl. Papers, 1878, lxii. ii. 226. Parliament being dissolved in the October following, Erskine was returned for the Dumfries burghs; *ibid.* 238.

was presented to Queen Charlotte by the Duchess of Gordon, the intimate friend of our house. At the levée, the good old King spoke graciously to my father, and ended with—'Not so rich as Tom, eh?—not so rich as Tom?' 'Your Majesty,' replied my father, 'will please remember my brother is playing at the guinea table, and I at the shilling one.'"[1]

Lord Melville had managed the affairs of Scotland for many years; but he was now under impeachment, and the Whigs were in power. Lord Moira, afterwards first Marquis of Hastings, had been in command of the forces in Scotland. The office of Master-General of the Ordnance was given him by the new Ministry. But he was not contented with this. Two or three years before he had married Flora, Countess of Loudoun, and being thus connected by marriage with Scotland, he formed the design of succeeding Lord Melville in the management of Scottish affairs. On the other hand, the Earl of Lauderdale had every reason to expect that, after faithfully serving the Whigs in Opposition, he would be rewarded by having the position of "Scottish Manager." The Ministry solved the difficulty by naming no successor to Melville, and leaving the patronage of Scottish affairs in the hands of the Home Secretary. Lord Lauderdale, however, was, in private, the adviser of Government.[2]

The only important Scottish question which came before Parliament during Erskine's short term of office was a proposal to reform the Court of Session. From time immemorial the Court, where the fifteen judges sat in one

[1] Fergusson, Life of Erskine, 440. Lord Erskine was said to have made £200,000 at the bar. But he appears to have left very little at his death.—Campbell, Lives of the Chancellors, vi. 676.

[2] Lord Holland's Memoirs of the Whig Party, i. 229, 230. Colonel Fergusson publishes an amusing letter, too long for quotation here, from two of Lord Advocate Erskine's constituents, suggesting "that his Lordship should seize the chief or entire management of all Scots affairs, in the same way that Dundas formerly did, whereby he would become popular in the country, when he could turn out Dundas's party, and put in their places his own friends and well-wishers."—Life of Erskine, 438, 439.

chamber, had been regarded as an institution which no change could affect. But there was great need for change. The arrears were so heavy, that if no new cases had been instituted it would have taken two years to work them off.[1] The forms of Court were cumbrous; the expense of litigation was unduly great; the patience and the purses of suitors were both frequently exhausted long before a cause was decided. The state of affairs was explained to the Ministers by the Lord Advocate, and, on the 18th of June 1806, Lord Grenville brought the subject before the House of Lords by moving a number of resolutions, which were agreed to.[2] In the following year he introduced a bill "for the better regulation of the Courts of Justice in Scotland." The leading proposals of the Government were three in number: first, the division of the Court into three chambers, consisting of five judges each; secondly, the introduction of trial by jury in civil cases; and thirdly, the institution of an intermediate Court of Appeal between the three chambers, or divisions, of the Court of Session and the House of Lords.[3] These proposals were bitterly resented by the judges, partly because they were averse to any change, but chiefly because the change in question was suggested by a Whig Government.[4] Meetings of the bar were held, at which various opinions were expressed. Some held that the Court must be reformed so as to suit the increase of business which was produced by the increase in the commercial prosperity of the country. Others lamented that the venerable institution should be altered in any way. Among the latter was Sir Walter Scott, who, according to Cockburn, "shed real tears over the threatened alteration of the old shape of the Court of Session." But the Ministry of All the Talents was not

[1] Lord Grenville's Speech, 16th Feb. 1807, Parl. Debates, viii. 789.
[2] Parl. Debates, vii. 730-736.
[3] *Ibid.* viii. 788-792.
[4] Cockburn's Memorials of His Time.

destined to make or mar the Court of Session. It was on the 16th of February 1807 that Lord Grenville brought in his bill. In order to give time for full consideration of the subject, he proposed that the second reading should not take place till that day three weeks. But in little more than three weeks the Whigs were out of office, and the bill was abandoned.

Once more Erskine laid aside his silk gown. He was never again in office; but, as he had been so long the foremost counsel at the bar, it was expected that a seat on the bench awaited him. On the 20th of May 1811 Robert Blair, President of the Court of Session, died. "The Faculty of Advocates," says Lord Cockburn, "hastily called together, resolved to attend him to his grave. Henry Erskine tried to say something, and because he could only try it, it was as good a speech as he ever made. The emotion, and the few and broken sentences, made this artless tribute, by the greatest surviving member of the profession to the greatest dead one, striking and beautiful."

What now took place shows the spirit of these days. Erskine should have succeeded Blair. Some years after, in the time of Sir Robert Peel, he certainly would have been appointed; but in 1811 everything had to give way to party feeling. At first it seems to have been thought that "the greatest surviving member of the profession" would be placed at the head of the Court.[1] But it was not to be. The Lord Justice-Clerk, Charles Hope of Granton, who, though a personal friend of Erskine, had been one of the eight advocates who signed the circular of 1795, was appointed President. He was fifteen years junior to Erskine at the bar, and was himself willing to forego his claims in favour of Erskine. Nor was this all. The office of Justice-Clerk, vacant by the promotion of Hope, was

[1] Fergusson, Life of Erskine, 507-509.

given to the youngest judge upon the bench, David Boyle of Shewalton, another of the eight. He was twenty-five years junior to Erskine. Erskine now went to London "to be fully apprised," he said, "of everything, and take my resolutions accordingly." One of these resolutions was, "never again to stand at the Scots bar." He retired into private life, and spent his closing years chiefly at his country house of Almondell in Midlothian. "All," said his son, Lord Buchan, "who saw my father when his prospects were suddenly obscured and his public life arrested, spoke of the dignified sweetness and equanimity with which he bore all his disappointments, and, turning his thoughts to his country place, made himself pleasant occupation in planting and building; enlarging the small cottage into a large mansion-house; throwing over the Almond a bridge, designed by Nasmyth, with the taste of a true artist, and studying and cultivating flowers, which were to him a great amusement."

In poetry Erskine had always delighted. A volume of verses written by him is still preserved among the manuscripts in the Advocates' Library. In these verses he had praised a pastoral life, and now, in his retirement, he wrote:

> "Give me a nook in some secluded spot,
> Which business shuns and din approaches not;
> Some snug retreat, where I may never know
> What monarch reigns, what ministers bestow,
> A book—my slippers—and a field to stroll in—
> My garden seat—an elbow-chair to loll in—
> Sunshine when wanted—shade when shade invites—
> With pleasant country sounds, and smells, and sights,
> And now and then a glass of generous wine
> Shared with a chatty friend of 'auld lang syne.'"

In quiet happiness his closing years were spent. Now and then rumours of coming honours reached him. Once a peerage was spoken of; and once it was thought that the ancient office of Lord Clerk Register was to be conferred

upon him. But the time soon came when no honour could be paid to him; for, on 8th of October 1817, after a short illness, he died in the 71st year of his age.

He was buried in the vault of Uphall Church. Perhaps no better epitaph could have been placed upon his tomb than the words of the poor man, who once said, when advised not to go to law against a wealthy neighbour, "Ye dinna ken what ye say; there's nae a puir man in Scotland need want a friend or fear a foe while Harry Erskine lives."

Erskine was twice married: in 1772 to his first wife, Christian Fullerton, daughter and heiress of George Fullerton of Broughton Hall near Edinburgh. She died in 1804. In the following year he was married again, to Miss Erskine Munro, sister of Sir Thomas Munro, Governor of Madras.[1] By his second marriage he had no children. The eldest son of his first wife succeeded his uncle as Earl of Buchan in 1829.

When Mr. Pitt came into power, on the fall of the Coalition Ministry in 1784, Ilay Campbell succeeded Henry Erskine as Lord Advocate.

Campbell, eldest son of Alexander Campbell of Succoth, had been at the bar since January 1757. His practice had been large. In the composition of written pleadings, the usual form of argument at that time, he had scarcely a rival; and his name appears in the reports as counsel in most of the important cases which were heard in the Court of Session during the fifteen years previous to his appointment as Lord Advocate. I have already mentioned that he was one of the counsel for the appellant in the Douglas Cause, and how, when the judgment of the Court of Session was reversed, he rode down to Edinburgh, outstripping the mail, and

[1] Fergusson, Life of Erskine, 419.

brought the first tidings of the decision to the people of Edinburgh.[1]

As a speaker Campbell was the reverse of Erskine. There was no brilliancy or eloquence about him. His manner was dry; his voice was dull; his hard face never glowed with enthusiasm. He was an able, ingenious, hard-working, commonplace man.[2]

In 1783 he became Solicitor-General, but was dismissed along with Dundas by the Coalition Ministry. In 1784 he succeeded Erskine as Lord Advocate, and at the general election of that year was returned to Parliament as member for the Glasgow burghs.[3] In the House of Commons he was never prominent; and very few speeches made by him are reported. In June 1784, soon after the meeting of the new Parliament, he spoke in one of the debates arising out of the Westminster Election; and in 1788 he took part in the long series of discussions occasioned by the illness of the King. But his voice was seldom heard; and when he spoke it was usually on Scottish business. During the five years of Campbell's Lord-Advocateship Scottish affairs were not prominent in the House of Commons; for the time of Parliament was taken up by a number of grave questions, such as the incapacity of the King and the proceedings against Warren Hastings. Even when a Scottish question was on the paper of the House of Commons Mr. Dundas generally took the lead, and the Lord Advocate found himself in a subordinate position.

In 1785, however, Campbell attempted to remove some of the causes of complaint against the Court of Session, the machinery of which was now felt to be very inefficient. His proposal was to reduce the number of judges to ten, and, at the same time, to increase their salaries. This measure was

[1] *Supra*, p. 65. [2] Cockburn's Memorials.
[3] Parliamentary Papers, 1878, lxii. ii. 186.

strongly opposed. Boswell took up his pen against it, and, on this occasion, he had the country on his side.[1] The Lord Advocate wrote a pamphlet, in which he answered the arguments against his bill.[2] But the opposition to the bill was so strong that it was speedily dropped. In the following year the salaries of the Scottish judges were increased without any diminution of their number. On the 10th of April 1786, Mr. Henry Dundas brought the subject under the notice of the House. "The application," he said, "for the increase of the salaries of the Scottish judges last session proceeded on the idea of reducing the number of the judges; but so great a prejudice was felt in Scotland against that proposition, that it has been necessarily abandoned." The salaries, the expense of which was by law charged against the customs and excise of Scotland, Dundas now proposed to increase; and the deficiency thus caused in the receipts from customs and excise was to be made good by a stamp-duty imposed on the various writs used in legal proceedings. Dundas having explained this plan, the Lord Advocate moved certain resolutions, which proposed that, in future, the Lord Chief Baron of the Court of Exchequer and the Lord President of the Court of Session should have two thousand pounds a year, and each ordinary judge one thousand. The Lord Justice-Clerk was to receive six hundred, and the Justiciary Judges three hundred, in addition to their salaries as judges of the Court of Session. These resolutions were agreed to; and in this manner, so agreeable to the judges, the question of reform in the Court of Session was settled for the next twenty years.[3]

In 1789, on the death of Sir Thomas Miller, Campbell became Lord President. For nineteen years he presided

[1] Edinburgh Review, ix. 475.

[2] His great point was, that delay and various irregularities were caused by the system of having fourteen or fifteen judges sitting in a body.

[3] Parl. Hist. xxv. 1369-1372.

over the Court of Session. This was his proper sphere. In Court he was respected as a great lawyer and good judge. "Of all the old judges," says Lord Cockburn, "he was the only one whose mind was thoroughly opened to the comprehension of modern jurisprudence." In private he was popular; ready to assist those who asked his advice, and hospitable to the junior bar.

Lord President Campbell was the last of the Presidents who guided the deliberations of the "Auld Fifteen;" for in July 1808 the fifteen judges sat, as one chamber, for the last time.

Campbell retired from the bench, received the honour of a baronetcy, and spent the remainder of his life in presiding, with the highest ability, over two Royal Commissions which were appointed to report on the subject of the reform of legal procedure in Scotland. For nearly fifteen years he gave the best part of his time and strength to his duties as a Commissioner, and prepared a series of elaborate reports which are still regarded as valuable repositories of information on the subjects to which they refer. While engaged in these labours he published, in 1811, a collection of old Acts of Sederunt. He did so, it is said, in order to illustrate and defend that *nobile officium*, or discretionary jurisdiction of the Lords of Session, the possession of which, according to Stair, constitutes the chief difference between them and the judges of the inferior courts. This volume is a work full of interest and value to every student of legal antiquities.

In the eighty-ninth year of his age Sir Ilay Campbell died, on the 28th of March 1823.

CHAPTER XVI.

STATE TRIALS.

ROBERT DUNDAS, son of the second Lord President Dundas, and Janet, daughter of William Grant of Prestongrange, was born on the 6th of June 1758. As the nephew of Henry Dundas, his success in life was certain and rapid. He was called to the bar in 1779, and became Solicitor-General in 1784, at the age of twenty-six. In 1787 he succeeded to the estate of Arniston, on the death of his father; and in the same year he married his cousin, the Honourable Elizabeth Dundas.

His kinsman Lord Cockburn describes him as "a little, alert, handsome, gentlemanlike man, with a countenance and air beaming with sprightliness and gaiety, and dignified by considerable fire; altogether inexpressibly pleasing." But he was a man of very moderate talents, who would never have risen, save for the accident of his birth. He was a bad speaker, "curiously bad," and thus unable to succeed in private practice.[1] But, born in the purple of the Tory party, he had nothing to fear; and, in 1789, at the age of thirty-one, he succeeded Ilay Campbell as Lord Advocate.

At the general election of the following year, his uncle, Henry Dundas, who had hitherto sat for Midlothian, chose to represent the city of Edinburgh, and thus make way for the new Lord Advocate, who was accordingly returned

[1] Cockburn's Memorials.

for the county. In the House of Commons, Ferguson of Pitfour, member for Aberdeenshire, complained of the appearance of Dundas. "The Lord Advocate," he said, "should always be a tall man. We Scotch members always vote with him, and we need, therefore, to be able to see him in a division. I can see Pitt and Addington, but I can't see this Lord Advocate."

He made his maiden speech on the 10th of May 1791, nearly a year after he became a member, in a debate on Sir George Elliot's motion for the repeal of the Test Act in Scotland. On this subject the General Assembly of the Church was unanimous. The Lord Advocate had been requested to bring in a bill for the repeal, but had declined. He now praised the clergy of the Church of Scotland, but resisted the proposal to repeal the Test Act; and on a division the motion was lost.[1]

In the session of 1792 Lord Advocate Dundas attempted to settle the question of Burgh Reform in Scotland. That some change was inevitable had been seen for some time. Abuses which arise out of the mismanagement of small local concerns interest many more persons than are affected by imperial affairs. These petty grievances are easily understood. They are felt from day to day. Therefore they are more deeply resented than bad foreign policy, or unjust wars, or than even heavy national taxation. The state of the Scottish burghs was scandalous. The magistrates were self-elected, and there was no control over their accounts. The public property of many burghs had been alienated. Some burghs had been plunged into debt. Every species of petty tyranny was exercised by the magistrates.[2] Taxes

[1] Parl. Hist. xxix. 488-510.

[2] In the records of the Town Council of Perth there was an Act of Council to the effect—"that if James Hay shall not, in future, take off his hat to the Provost, he shall be punished; and that he, or any persons who will not reverence the Provost and Magistrates, must walk on the other side of the street"! 15th April 1668.

were sometimes imposed without the authority of Parliament. The revenues were misapplied. Access was often denied to the public records. Such were some of the abuses which had irritated the people. Nor were these abuses of yesterday. In 1469, by an Act of James the Third, the burgesses had been deprived of the right of electing their own magistrates. At that time, the High Chamberlain of Scotland, when riding the Circuits, called the magistrates to account for the way in which they managed the funds of burghs; but his office was abolished early in the sixteenth century, and his jurisdiction over the magistrates was transferred to the Court of Exchequer.[1] The Statute by which this was done proved useless, and the affairs of the burghs grew worse and worse. There were constant complaints. In 1684, a Commission, appointed to examine the accounts of the royal burghs, reported that the administration of the burghs was corrupt and the cause of unceasing irritation. In spite of frequent attempts to bring about a change, nothing was done. But in 1783 it was resolved to hold a conference of delegates from the burghs, with the view of agitating for reform; and in the following year the delegates of fifty-four burghs met, and appointed a Standing Committee to promote the cause of reform.[2] In 1787 their scheme was ready, and an appeal was made to Parliament.

It is worthy of notice that the agitation for Burgh Reform was not a party move. The reformers applied first to Mr. Henry Dundas and then to Mr. Pitt. The fate of their application is thus described by the great champion of their cause:[3] "By the express directions of the Committee, a

[1] Stat. 1535, cap. 26.

[2] Fletcher on Burgh Reform, 15-22. The Committee consisted of twenty-five members, among whom were Henry Erskine, and other members of the bar.

[3] Archibald Fletcher, who came to the bar in 1790, and was known as "the father of Burgh Reform."

personal application had been previously made to the Right Hon. Henry Dundas, who was considered as the Minister for Scotland, to support the reform in Parliament. But Mr. Dundas, in perfect consistency with the manly openness of his character, told us at once that he would not support, but oppose, the object of the Burgh Reform. The fate of the application to Mr. Pitt, the Minister himself, was different, though not more satisfactory. After the delivery of the letter to him, our solicitor beat his door almost every day for a period of six weeks; but he never made any answer whatever, either verbal or written, nor could our solicitor find access to his person."[1] The reformers now turned to the Whigs, and the grievances of the Scottish burgesses were laid before Mr. Fox, who answered, "I will tell you, gentlemen, who will undertake your case. Go to Sheridan, to whom I shall recommend it. He will bring it forward in all its force, and I shall with infinite satisfaction support him." They went to Sheridan; and the Whig party was pledged to Burgh Reform.

On the 28th of May 1787 Mr. Sheridan presented a petition from Glasgow in favour of Burgh Reform, and supported it by a strong speech. In answering him, Mr. Henry Dundas did not attempt to face the question; but he succeeded in securing the rejection of the petition on technical grounds. In June of the following year, Mr. Sheridan again brought the subject under the notice of Parliament, and moved for leave to introduce a bill "to correct abuses in the management of the royal burghs of Scotland, and in the manner of accounting for the expenditure of the same." Some Tory members were content to oppose the motion on the ground that it was in the power of the Lord Advocate to compel the magistrates to show an accurate statement of the revenues of their burghs; but Dundas had the hardihood to assert that, on inquiry, it

[1] Fletcher on Burgh Reform, 45.

would be found that the funds of the Scottish burghs were as well managed as those of any corporations in the kingdom.[1] Mr. Pitt objected to the terms of the motion, which implied that there were known abuses. Sheridan altered them so as to meet this objection. A bill was brought in, read a first time, and printed; but, from a variety of causes, no further progress was made. In 1789 and 1791, the subject of Burgh Reform for Scotland was pressed on Parliament by the Whigs; but Dundas always succeeded in preventing legislation.

But each year made it more difficult for the Tory party to defend the existing state of things. On the 18th of April 1792 Mr. Sheridan moved that it was incumbent on the House of Commons, at least to inquire whether the grievances complained of were real, and what remedy the House should apply if they were. He was answered by the Lord Advocate, who denied the existence of abuses or misrule. "I will insist," he said, "in the face of any lawyer in Scotland, that if any magistrate exacts taxes from, or dilapidates the property of, the burgesses, he is amenable to the laws of the country; because there is a power in the Court of Session to inquire into and grant redress in all such cases. In my official situation I have lent my name to such informations, and always will do so." He concluded by stating his opposition to going into any committee of inquiry, because that might give the country reason to think that the grievances really existed, whereas he believed they did not.[2]

Mr. Fox answered the Lord Advocate, and declared that he hoped "common justice" would induce the House to allow at least an inquiry to take place. But the Government would not yield. Henry Dundas spoke of the alleged grievances as "supposed and unsubstantiated;" and another

[1] Parl. Hist. xxvii. 634. [2] *Ibid.* xxix. 1194.

Tory member said that his regard for the Constitution led him "to oppose every motion for reform that had been, or could be, brought forward." Ultimately Mr. Sheridan withdrew his motion for an inquiry by the House, and moved that the subject be referred to a Committee; but against this proposal the Government had a majority of forty-two in a thin house.[1]

It was, however, felt that some concession must be made to the people of Scotland. The duty of preparing a measure fell on Lord Advocate Dundas; and, in 1792, he brought in a bill to regulate the mode of accounting for the common good and revenues of the royal burghs of Scotland. But the Reform party condemned his proposals on two grounds: he allowed the system of self-election to remain, and he proposed that the magistrates should appoint the auditors of the burgh accounts.[2] The bill was censured by the delegates of fifty-three royal burghs, and after having been read a second time, was abandoned. In the following year substantial progress was made. On the motion of Sheridan, all the petitions and papers on the subject of Burgh Reform were referred to a Committee. In June a report was presented to the House of Commons. It was found to prove the existence of important grievances; and the Reformers believed that the agitation of the last ten years was about to be rewarded with success. But the French Revolution had raised among the upper classes such a feeling against all liberal movements, that it was suggested to the leaders of the movement for Burgh Reform that it would be prudent to abandon their project for a time. They agreed to do so.[3]

It was now becoming evident that the real cure for all grievances was a measure reforming the representation of

[1] Parl. Hist. xxix. 1203. [2] Fletcher on Burgh Reform, 120.

[3] "We felt," says Fletcher, "the wisdom and extreme propriety of the suggestion."

the people. Nearly twenty years before, Burke had stated in the House of Commons, that, in his opinion, Scotland was not fully represented. It might, with greater accuracy, have been said that Scotland had no representation whatever. The self-elected town-councils elected the burgh members; and the freeholders, a small body of persons, elected the county members. To change this state of things was the hope of all reformers; and the Association of the Friends of the People was formed. Among the members of this, the parent of the "Liberal Associations" of our own day, were many persons of high position in the country. Lord Lauderdale was active in promoting it.[1] So were Grey, Whitbread, and Tierney. But, in some respects, it was not a source of strength to the cause of Reform. Many of the old Whig party opposed it, and looked with suspicion on the aspirations of the more ardent reformers.

It was in the Star Inn at Glasgow, on the 30th of October 1792, that the Scottish branch of the Friends of the People met for the first time. The reformers pledged themselves to use all constitutional means to obtain an equal representation of the people, and a shorter duration of Parliament. Among the delegates assembled were clergymen, advocates, country gentlemen, merchants, and working men. Colonel Dalrymple of Fordel was chosen President of the Association; and Thomas Muir, younger of Huntershill, a member of the bar, was chosen Vice-President.

On the 6th of May petitions in favour of Reform, from various towns in England and Scotland, were presented to Parliament. Among these was the petition of the Friends of the People, which was brought to the table by the member who, nearly forty years after, led that famous Ministry which carried the Reform Bill. When the petitions had all been laid before the House, Mr. Grey moved that they be referred to

[1] Lord Holland, Memoirs of the Whig Party, i. 13.

a Committee. After two days of debate he was defeated by a majority of two hundred and eighty-two votes to forty-one.[1]

In Scotland the supporters of Government were now thoroughly alarmed. The Lord Advocate found himself in an awkward position. He was himself a man of very moderate views; but most of those on whom his uncle's influence depended were clamorous for severe measures against the reformers. The loud entreaties of his friends, and, it is to be feared, the secret whispers of the judges, all combined to force him into that series of State Trials which fills so large a space in the history of Scotland during the years 1793 and 1794. Early in 1793 a number of trials for sedition, seditious practices, or circulating seditious writings, took place. The accused were shopkeepers or working men. In some cases they did not appear; in others sentences of imprisonment for a few months were pronounced.[2] But these prosecutions did not stop the agitation of the Friends of the People. They continued to meet and correspond with the associations in England.

The meetings of the reformers were private; but the Lord Advocate knew all that was going on. A spy had been hired to attend the meetings, under pretence of being a member, and report to the Lord Advocate everything that was done. Who or what this spy was it is impossible to say. His letters are anonymous. He may have been a man named Watt, who was afterwards tried and executed for treason, and whose defence was that he was acting for Government at the time he was arrested. He was evidently a person of talent and education, as the reports which he prepared are clearly written. He was [illegible] that went on. He saw [illegible] members of the [illegible] minutes [illegible]

a copy, sent it to the Lord Advocate. At other times, on returning from a meeting, he would sit up till four or five in the morning writing his information; and the same post which carried to London declarations of loyalty from county meetings, carried also the spy's reports of all that was done by the Friends of the People. The Lord Advocate's informer did not always feel comfortable. In one letter he says, "Return my manuscripts, that they may not rise up in judgment against me;" and on another occasion he writes, "You should have sent me something to enable me to attend the dinner at M——;[1] where the majority of the Convention are just now drinking success to the cause of Reform. But it is as well that I am absent. 'Tis surely enough that I communicate intelligence properly without meddling with the unguarded effervescence of conviviality."[2] By such means Government became aware of all that was going on; and it was determined to make an example of some prominent reformer.

Thomas Muir, younger of Huntershill, was the selected victim. In December 1792 a meeting had been held in Edinburgh, under the title of "A general meeting of delegates from the Societies of the Friends of the People." Muir, a young man of twenty-eight, took a leading part in the proceedings. The Society of United Irishmen, which had been founded in the previous year by the notorious Wolfe Tone and his friends, had sent an address to the Friends of the People. It professed to explain the aims and hopes of the United Irishmen, and contained such expressions as the following, "Universal Emancipation, with Representative Legislature, is the polar principle which guides our Society, and shall guide it through all the tumult of factions and fluctuations of parties;" "If Government has a sincere regard for the safety of the Constitution, let them coincide

[1] Illegible.

[2] Scot. MSS. 1792, 1793, Record Office.

with the people in the speedy reform of its abuses, and not, by an obstinate adherence to them, drive that people into republicanism;" "In each county let the people assemble in peaceful and constitutional convention."[1] Muir foolishly proposed that this address should be received, and that a reply should be returned to the United Irishmen. Harmless as the document appeared, it was the production of a treasonable association which, in a few years, deluged Ireland with blood. The members of the Association of Friends of the People were cautious; and the meeting came to an end before any answer was sent to the United Irishmen. But from that day Muir was a marked man.

Sympathy with the misfortunes of Muir has led some of his biographers to describe him as a young man of very distinguished abilities. This is an exaggeration. It appears, however, that he had good parts, a considerable talent for public speaking, an enthusiastic nature, and a generous heart. He was popular at the bar, where he was known as "the Chancellor," because his mother, it was said, had once dreamed that her only son would be Lord Chancellor of England.[2] Such was the character of the man on whom the vengeance of Government was now to fall. On the 2d of January 1793 he was arrested and taken before the Sheriff of Midlothian. He made a declaration, and was liberated on bail. Soon after he left the country. His trial, originally fixed for the 11th of February, was postponed till the 25th; but he did not appear on that day, and was outlawed. In July he was arrested at Portpatrick, when on his way home to stand his trial. He had, it was found, been in France,[3] where he was introduced to Barras, Condorcet, and La

[1] Report of Secret Committee, 1799, Append. i.; Parl. Hist. xxxiv. 616.

[2] Cockburn, Life of Jeffrey. Thomas Muir had been called to the Scottish bar on the 24th of November 1787.

[3] Life of Thomas Muir, by Peter Mackenzie (1831), p. 13. His passport, from the French Minister of Foreign Affairs, gives a description of his appearance:

Fayette. He had reached Paris on the eve of the King's execution: a fact which was pressed upon the Lord Advocate as a reason for using the utmost severity against him.

The trial took place on the 30th of August 1793, before five judges of the High Court of Justiciary. Lord Justice-Clerk Braxfield was in the chair, a man of talent, but disgraced by some of the worst qualities which can stain the character of a judge. Muir was a few minutes late of arriving, and was, according to the reporter, "reprimanded for keeping the Court waiting." The Lord Advocate and Solicitor-General prosecuted. Muir defended himself.

The indictment charged him with exciting, by speeches addressed to meetings "brought together by no lawful authority," a spirit of disloyalty; with advising people to purchase and read seditious writings; with distributing the same; and with, in particular, recommending Paine's "Rights of Man." It was then the practice for a prisoner to lodge a written statement of his defence. Muir's defence was that, so far from exciting the people to riot, he had advised them to pursue constitutional methods. The charge of circulating seditious writings he denied; but he stated that he made a point of advising his hearers to read both sides of the question of Parliamentary Reform.

The trial illustrates the evils of the way in which juries were, at that time, chosen in Scotland. The first five jurors picked by the presiding judge were members of an association called the Friends of the Constitution. This body had held a meeting, at which the members expressed much zeal for the Constitution, and had arranged that a book should be kept at the Goldsmiths' Hall, in which should be enrolled the names of those who wished to show in this way their adherence to the British Constitution. Muir had gone to the

"Twenty-eight years of age, five feet nine inches high, his hair and eyelashes of a chestnut colour, blue eyes, aquiline nose, small mouth, round chin, high forehead, long and full face." Political Martyrs of Scotland, 9.

Goldsmiths' Hall and signed his name; but his signature, and those of other reformers, had been erased. Moreover, this Association had published attacks on those writings of Paine which Muir was accused of circulating. It was, therefore, perfectly evident that no member of the Association should have served on the jury. Muir objected to what the Justice-Clerk was doing. "I demand justice," he said. "Let me be tried fairly, not by a jury of the Association of Goldsmiths' Hall, nor by a jury of the Association of the Friends of the People, but by men unconnected with either, whose minds cannot possibly be supposed warped with prejudices."[1]

But the Justice-Clerk did not wish the prisoner to have a fair trial. He wished to secure a conviction. "Come awa'," he whispered to one of the jury, who passed him on his way to the jury-box, "come awa', and help us to hang ane o' thae daamned scoondrels."[2] The objection raised by Muir was repelled; and, in the end, all the jurymen named by the Court were members of that Association which had refused to receive Muir as a member, and therefore persons who had, there can be little doubt, prejudged the case. It was in vain that Muir pointed out the injustice of what was done. The jurors were picked for the express purpose of finding him guilty. In despair, the unfortunate prisoner, when the number was complete, implored the jury to do justice. Lord Braxfield brutally interrupted him, and said that his conduct was "exceedingly improper, in taking up their time."[3]

The case went to trial. From beginning to end the proceedings were disgraceful. In the opinion of competent onlookers, the Lord Advocate did not press the case unduly. It was unnecessary that he should do so; the judges pressed it for him. The printed reports, it is said, give no idea of

[1] State Trials, xxiii. 135. [2] Cockburn's Memorials.
[3] State Trials, xxiii. 136.

the conduct of the bench. The spectators were horrified. "I am not surprised," Romilly said to a friend, "that you have been shocked at the account you have read of Muir's trial; you would have been much more shocked if you had been present at it, as I was."[1]

The first witness called by the Lord Advocate was objected to by the accused, who offered to prove that he had said he would do everything in his power to hang him. The judges answered that this was no objection, as the witness might have made such a statement for the purpose of being disqualified! The ordinary courtesy which the bench ought to show to a prisoner was neglected. Muir made an apology for a slight mistake which he had made, and he was roughly told that he was "not in a place for making apologies." Much of the evidence which the Lord Advocate led ought to have been rejected. Instead of confining the Lord Advocate to the facts set forth in the indictment, the judges allowed him to prove many circumstances of which Muir had received no previous warning. For instance, the indictment did not charge him with speaking disrespectfully of the Court of Justiciary, but evidence was led to prove that he had done so. To this Muir objected, but the judges disposed of the matter without difficulty. The general proposition of the indictment, they said, was that the prisoner went about sowing sedition; the Courts of Justice were a part of the Constitution; therefore reflections on the Courts of Justice fell under the indictment.

The judges, who were keen to admit any witnesses whose evidence would tell against the prisoner, were equally keen to exclude witnesses for the defence. One of the questions which were, at that time, put to a witness before he gave evidence was, Had he been told what to say? One of Muir's

[1] Memoirs of Romilly, ii. 23; Life of Jeffrey, i. 58; Cockburn's Memorials, 99-102; Annual Register, 1794, History, 116.

witnesses replied, "Nothing, except to tell the truth." The meaning of this was plain. It is what the friends of a witness often say to him before he goes into Court. But Muir's witness was at once asked who had said so. He answered that he could not tell, as he did not remember. On this the Lord Advocate said that, "as there appeared evident signs of a desire to conceal the truth in this man, he hoped their Lordships would punish him by ordering him to be committed to prison." Muir, who was entitled to oppose a motion for the removal of one of his own witnesses, attempted to speak, but the judges ordered him to sit down. The motion of the Lord Advocate was granted; and the witness was sentenced to three months' imprisonment.[1]

The evidence for the defence was very strong. It was proved beyond doubt that Muir had always impressed on all the meetings he harangued that reform was to be sought by constitutional means alone. But he had spoken on Parliamentary Reform; he had ventured to say that the people were not fully represented; and he had advised his friends to read political works. To have done so much was, in the opinion of Braxfield, to have been guilty of sedition.

The Lord Advocate, who had conducted the case with moderation while the witnesses were being examined, became violent when he rose to address the jury. He boasted that all the political prisoners whom he had prosecuted hitherto had met the same fate. They had all been found guilty. He spoke of the "diabolical and mischievous conduct" of Muir. He called him a "demon of mischief," "the pest of Scotland," "the unfortunate wretch at the bar;" and described him as "weaving his filthy web to ensnare the unwary."

Muir's speech in reply was injudicious. The Lord Advocate had just done all he could to inflame the minds of a jury, chosen because the judges thought they would

[1] State Trials, xxiii. 176.

convict him, with feelings of alarm and resentment. His only chance of escape lay in adopting a tone of moderation. He should have tried, though probably it would have been in vain, to conciliate the jurors. Above all, he should have confined himself to the facts of his case. But he delivered a long and impassioned address. He defended all that had been said and done by the Friends of the People; and he was so foolish as to attack the policy of the Government in instituting the State Trials. "Was it," he asked, "a crime of Plato, under the Athenian republic, to compose his beautiful system of one more perfect? Was Sir Thomas More led forth to the scaffold for composing his Utopia, Harrington proscribed for his Oceana, or Hume exiled for his Commonwealth?" Declamation of that description was worse than useless. There were very few men in Scotland, of the party from whom the jurymen were chosen, who would not have convicted Plato, More, Harrington, Hume, or any one else, of sedition, if requested to do so by Mr. Secretary Dundas.

The Lord Justice-Clerk summed up the evidence by a charge, in which he did not pretend to be impartial. He told the jury that, in proceeding to consider their verdict, they must bear two things in mind, which, he said, required no proof. "The first is, that the British Constitution is the best in the whole world: for the truth of this, gentlemen, I need only appeal to your feelings." The other circumstance to be borne in mind was, the state of the country during the preceding winter. "There was a spirit of sedition and revolt going abroad, which made every good subject seriously alarmed." Muir's conduct, he said, in speaking of reforming such a Constitution, at such a time, appeared to him to be seditious. He then commented on Muir's advice to the working classes, that they should petition Parliament for reform. "Mr. Muir might have known that no attention

could be paid to such a rabble. What right had they to representation? He could have told them that the Parliament would never listen to their petition. How could they think of it? A government in every country should be just like a corporation; and in this country it is made up of the landed interest, *which alone has the right to be represented;* as for the rabble, who have nothing but personal property, what hold has the nation of them? What security for the payment of their taxes? They may pack up all their property on their backs, and leave the country in the twinkling of an eye, but landed property cannot be removed."[1] The prisoner had been able to show that he had always counselled peaceable measures, and had spoken against riots and disorder. The proof of this was too strong to be ignored; but the judge had an explanation ready. Muir, he said, discouraged revolt for the present, in order to advance his treasonable purposes. He was waiting for a general insurrection. "He was in the meantime, however, evidently poisoning the minds of the common people, and preparing them for rebellion." With this observation, he left the case to the jury, who unanimously found the prisoner guilty.

The sentence passed on Muir was transportation, for fourteen years, to such place as the Privy Council should direct, under penalty of death if he should return before the expiry of that time. The Justice-Clerk hinted that it was owing to the humanity of the Lord Advocate that the prisoner had not been on trial for his life, and said that he had some doubts whether he ought not to be banished for the rest of his existence. Another of the judges, John Swinton of Swinton, declared that torture was the proper punishment for Muir's offence. At dead of night the unhappy man was taken to Leith, and shipped off to London.

The trial of Muir finished on the 31st of August. In

[1] State Trials, xxiii. 231.

September the Circuit Court of Justiciary met at Perth. The principal case was the trial of the Reverend Thomas Fyshe Palmer for seditious practices, which took place on the 12th and 13th of that month. Palmer was an Englishman of good family. He had been educated at Eton and Cambridge, and had taken orders; but, leaving the Church of England, he had become a Unitarian. In 1793 he was a Unitarian clergyman in Dundee, and had corresponded with Muir. He was now indicted for writing and publishing an "Address to their Friends and Fellow-Citizens," from a political club called the "Society of the Friends of Liberty." The Crown failed to prove that he was the author of this "Address," but there was no doubt that he had published it. It was an attack on the policy of the Government, and a plea for reform in the House of Commons. He was found guilty, and sentenced to seven years' transportation. After lying in the jail at Perth for some weeks, he was sent to London, and confined in Newgate along with Muir.[1]

In December Mr. Secretary Dundas wrote to the Lord Justice-Clerk, stating that representations had been made to Government against the legality of the sentences on Muir and Palmer, and requesting the opinion of the judges on the subject. Lord Braxfield, in transmitting the opinion of the Court, which was that the sentences were legal, added a private note of his own, urging that the royal mercy should not be extended to the condemned men.[2]

The convictions of Muir and Palmer had the effect of repressing, for a short time, the formation of political associations; but a network of these societies was soon spread over the country. What had been done openly before the trials of 1793 was now done secretly. The chief association in Scotland was the Society of United Scotsmen.[3] Parochial

[1] State Trials, xxiii. 237-382. [2] Scot. MSS. Record Office.
[3] Report of Secret Committee, 1799, Append. 15.

and county committees were appointed to extend the influence of this body; and the members bound themselves by an oath to use all lawful means to obtain a full representation of the people in Parliament. Their first meeting was held at Edinburgh in October 1793. Delegates from London were present, who had been instructed to support no proposals which did not imply the use of lawful means alone. Two of the delegates were Joseph Gerrald and Maurice Margarot. The Secretary was a man named William Skirving. The proceedings of this Convention were carefully watched. The Lord Advocate could depend on receiving ample assistance from the judges, who, though not corrupt, had already shown themselves to be prejudiced and unscrupulous. It was rumoured that the powers of the Lord Advocate were to be increased. Hitherto the Act of 1701, the Habeas Corpus Act of Scotland, had been a safeguard against undue delay in bringing prisoners to trial, and other modes of oppression; but it was now reported that the Act of 1701 was to be suspended in Scotland, and the Habeas Corpus Act in England. If this were done, it was said, Lord Advocate Dundas would possess all the powers which Sir George Mackenzie had exercised a century before. This the Convention of reformers declared, in private conclave, would be such an infringement of the Constitution as would entitle them to resist the authorities by force. A "Committee of Emergency" was formed for the purpose of organising the means of resistance; and at this point the Advocate resolved to interfere.

On the night of the 5th of December 1793, the Lord Provost of Edinburgh, followed by a number of constables, went to the room where the reformers were meeting, and commanded them to stop their proceedings. They at once obeyed. Skirving,[1] who had not been present, was arrested

[1] Skirving was the son of a farmer. He was educated at the University of

later in the evening. On the following night the Convention met for the last time. Gerrald and Margarot were present. The Sheriff-Substitute of the county went to the place of meeting, which was outside the boundaries of the city, attended by a band of men carrying torches. He ordered the meeting to disperse. Gerrald asked leave to pray. To this the Sheriff agreed, and himself listened, with uncovered head, while Gerrald prayed for "help in the hour of trial and persecution." They then left the room. "Behold," said Gerrald, when he saw the torches of the attendants, "the funeral torches of Liberty!"[1] Skirving and Margarot were tried early in the following year, and were both sentenced to fourteen years' transportation.[2]

There was great excitement in Edinburgh during the trials, which took place in the first fortnight of January. The Lord Advocate, whose moderation and fairness were always acknowledged by the reformers, was held responsible for the prosecutions. He received the warnings and threats which are always sent to public men at such times; and nothing more clearly shows the state of panic into which the ruling classes in Scotland had then fallen than the fact that these missives were carefully forwarded to the Government, and are to be found among the official correspondence of the time. One may be given as an example. It is an anonymous letter, in a woman's handwriting, dated 23d January 1794, and addressed to the Lord Advocate. "Your Lordship," says the writer, "is daily losing in the esteem of the Rabble. The sanguinary and harsh measures employed against the Reformers are, with some degree of propriety,

Edinburgh, and intended to become a Nonconformist minister. But, after living for some time as tutor in the family of Sir Alexander Dick of Prestonfield, he became a farmer in Kinross-shire. He wrote on agriculture, and was once a candidate for the Chair of Agriculture in the University of Edinburgh.

[1] Annual Register, 1794, Hist. 130; Political Martyrs of Scotland, 23.

[2] State Trials, xxiii. 391-778.

attributed to you. Mr. Muir's, and now Mr. Skirving's and Margarot's cruel treatment have added to your Lordship's unpopularity; a few more will render you perfectly odious. It will then be reckoned honourable to deprive Society of such a Pest. Some Male, or rather more likely some Female hand, will direct the Dagger that will do such important service: and Britain shall not want a Female Patriot emulous of the fame of M. Cordet in your Lops humble servant Tabitha Bramble."[1] Instead of being dropped into the waste-paper basket, this document was carefully sent up to the Secretary of State in London, and has been preserved ever since among the archives of the nation,—an honour, doubtless, quite unexpected by its obscure author.

The trial of Gerrald took place in March 1794, when the Lord Advocate, although Parliament was sitting, appeared for the prosecution, and obtained a conviction. The sentence was fourteen years' transportation.[2]

The Scottish State trials were discussed in London. The personal character and talents of the convicts increased the disgust which was excited by the conduct of Braxfield. Muir and Palmer were visited by Mr. Sheridan on board the ship which was to carry them to Botany Bay. On behalf of Gerrald, Dr. Parr, who had known him since he was a boy, made every effort. "I send you a few books," he wrote, "in addition to other matters: they will cheer you in the dreary hours of that forlorn spot to which the inhuman governors of this land are about to send you."

The subject was brought under the notice of Parliament. In the House of Lords, on the 31st of January 1794, Earl Stanhope moved that an address should be presented to the King, stating that the House desired to examine the circumstances attending the sentence passed on Muir, and praying that he be not transported beyond seas until the House had

[1] Scot. MSS. Record Office. [2] State Trials, xxiii. 803-1012.

had time to make the examination. Lord Mansfield opposed the motion, chiefly on the ground that the sentences were strictly conformable to the law of Scotland. Lord Chancellor Loughborough also opposed it, on the ground that the proposal that the House should ask the Crown to postpone execution of a sentence was without precedent. Lord Thurlow, while admitting that it was idle to say that the judges might not have done wrong, agreed with the Lord Chancellor that the constitutional course, in all cases where the judges mistake the law or abuse their discretion, is to petition the Throne for redress. The motion was rejected by a majority of forty-nine votes to one.[1]

In the House of Commons Mr. Adam brought forward, on the 4th of February, a motion on the criminal law of Scotland. His proposal was to introduce a form of procedure similar to the English writ of error. In England the Attorney-General had the power of considering any application made to him for a writ of error, which he could either grant or refuse. Mr. Adam now wished to confer on the Lord Advocate the "judicial discretion," which, in such cases, was enjoyed by the Attorney-General. The writ of error, he explained, being granted by the Lord Advocate, the whole proceedings at a trial would come before the House of Lords. He argued, on the principle that the Court in which a case begins should not be the final Court to decide it, that there ought to be an appeal from the Court of Justiciary to the House of Lords, and moved for leave to bring in a bill providing for such an appeal.

Although one of the arguments used against this motion was that the people of Scotland were quite satisfied with the state of the law, there can be no doubt that an appeal from the Court of Justiciary to the House of Lords would have been very popular in Scotland at that time. Muir's trial

[1] Parl. Hist. xxx. 1307, 1308.

and sentence had created a profound sensation. A deep distrust of the judges was felt by all classes. Not one man in ten, outside the official circle, pretended to believe that he had had a fair trial. But to give the Lord Advocate the power of granting a writ of error would, in cases of sedition, have proved a mere sham; for the Ministerial party, of which he was the instrument, was merciless in its determination to crush the reformers.

Mr. Adam's motion was lost by a large majority; but, on the 10th of March, he again brought the subject before the Commons, and, in moving for papers in the case of Muir, attacked the way in which the Lord Advocate and the judges had behaved.[1] The Lord Advocate replied. The report of his speech is so meagre that it is impossible to know exactly what he said. But he defended all that had been done, and insisted on the right of the Court to inflict the punishment of transportation. In the debate which followed he was bitterly attacked. Never, except on one memorable occasion, did any Scottish official sit in the House of Commons through such a storm of reprobation. Sheridan rose, and declared that he could not remain silent after the arguments which he had just heard. He said that the statement of the law of Scotland given by the Lord Advocate was enough to alarm every man in the country. With regard to the witness who had been disqualified because some one had told him to speak the truth,[2] he asked the Lord Advocate if he meant to say that speaking to a witness, in that way, rendered his evidence inadmissible? "He certainly cannot mean to palm such nonsense on the House as Scotch law. It is not, I assert, the law of Scotland." What, he asked, was the charge against Muir and Palmer? "Mr. Palmer had been accused of inciting poor people to insist on a Parliamentary Reform. If the learned Lord had

[1] Parl. Hist. xxx. 1486-1576.

[2] *Supra*, 191.

not been as ignorant of English history as of English law, he would have found some resemblance to Mr. Palmer's conduct; he would have found a resolution signed Pitt and Richmond, from which every word and sentiment used by Mr. Palmer had been stolen." Whitbread, who followed Sheridan, said that, "since he had had a seat in the House, he had never heard a speech which so much excited his indignation as that of the Lord Advocate; and he hesitated not to declare that if the law of Scotland was such as represented by the learned Lord, it was a law of tyranny and oppression, and it was absurd to speak of personal liberty in that country."[1]

But the strongest speech was made by Fox. "So strikingly disgustful," he exclaimed, "are the whole features of this trial, and so enormous its proceedings, that when I first heard of them I could not prevail on myself to believe that such proceedings had actually taken place; the charge itself, and the manner in which that charge was exhibited, made my blood run cold within me. I read the first edition, I discredited; I read the second and third editions; I was inclined to disbelieve them all; nor would I even believe it now, but in consequence of what I have heard from this Lord Advocate himself. . . . Let him show me by what laws of eternal justice such proceedings as have lately taken place in Scotland can be vindicated. It is too much for professional men to expect that we should pay implicit obedience to their doctrines. Does the Lord Advocate suppose that I will give unlimited confidence to his *ipse dixit?* He is wrong if he imagines we are not equally capable of discussing subjects of legal policy. It is evident, from all that has been said, that the legality of the sentences passed upon Messrs. Muir and Palmer is highly questionable." He commented on the statement of Lord Braxfield

[1] Parl. Hist. xxx. 1559.

that the landed interest alone had the right to be represented in Parliament, and on that of Lord Swinton to the effect that torture was the only adequate punishment for Muir's offence, and exclaimed, "God help the people who have such judges!"

Such were the feelings with which the Whig leaders regarded the State prosecutions in Scotland. But their eloquence was addressed to unheeding ears; and Mr. Adam's motion was lost by a large majority.[1] In both Houses of Parliament the question was again discussed; but the Government was too strong to be attacked with any hopes of success.

The sentences on Muir, Palmer, Skirving, and Margarot were carried into effect; and they were conveyed, in company with a number of common felons, to Botany Bay. Gerrald was confined in Newgate till May 1795, when he was taken to the same place. "He scarcely survived three months, for we find he died on the 16th of March 1796; and Skirving died three days afterwards."[2] Muir, the most prominent of the convicts, escaped, and, after a number of extraordinary adventures, reached France, where he was welcomed by the Republican Government. He died at Chantilly in September 1798.

In Scotland the "Political Martyrs" of 1793 were long remembered; and the circumstances in which they were tried and condemned did much to advance the cause of the Whig party in that country. In 1844 a monument was erected, in the Calton Cemetery at Edinburgh, to their memory, "by the friends of Parliamentary Reform in England and Scotland."

The English State trials of 1794, the brilliant speeches of Erskine, and the acquittals by English juries, are well

[1] Ayes, 32; Noes, 171. Parl. Hist. xxx. 1576.
[2] Mackenzie, Life of Muir, 34.

known. The Scottish trials of the same year presented a different spectacle. The forms of English law were there. The cases were tried before a Commission of Oyer and Terminer; there was a Clerk of Arraigns to swear the jury; the Crier spoke of the Lord Advocate as the "King's Attorney;" there were twelve jurors, according to the English custom. One thing was wanting: the intrepid spirit of an English jury. The cases to be tried were serious. A conspiracy, it was said, had been formed to upset the Government of Scotland. Edinburgh was to be set on fire; the Castle was to be stormed; the banks were to be sacked; the judges were to be put in jail; and, when all this had been done, the King was to be called on to dismiss the Ministry and make peace.

When it was found that prosecutions for treason were to take place, the Lord Advocate, who shrank from the work before him, was anxious that an English barrister should be sent down to manage the cases on behalf of the Crown.[1] But it was arranged that neither an English judge nor English counsel should be present. Lord President Campbell was put at the head of the Commission; and the prosecution was intrusted to the Lord Advocate, Solicitor-General Blair, afterwards Lord President, and two Depute-Advocates.[2]

The Commission sat at Edinburgh on the 14th of August 1794. In explaining to the Grand Jury the method of procedure under a commission of Oyer and Terminer, the President said: "One advantage the prisoner certainly has by it, namely, that of passing through the hands of two

[1] Letter of Lord Advocate Dundas, 20th June 1794, Scot. MSS. Record Office.

[2] The Commission consisted of the Lord President, Ilay Campbell, Lord Justice-Clerk Braxfield, Lords Henderland, Eskgrove, Swinton, Dunsinnan, and Abercromby, Lord Chief Baron Montgomery, and the Hon. Fletcher Norton, Senior Baron. State Trials, xxiii. 1167.

different juries before he can be convicted. The King's Advocate, in every other case, exercises the power of a Grand Jury in Scotland, and it is believed that no Advocate has ever yet abused that power. But in cases of high treason, none of us will regret that so high and momentous a trust is committed to no individual whatever." True bills for high treason were found against Robert Watt and David Downie; and these men were accordingly tried.

The case of Watt was taken first. The prisoner was defended by Henry Erskine. The defence was that the accused was a spy in the employment of the Lord Advocate and Mr. Secretary Dundas, and that he had attended political meetings in order to obtain information for Government. The documents produced showed that he had been in communication with the authorities. He had written to the Home Secretary, saying he could give information as to the state of Scotland; and Dundas had answered by requesting him to tell all he knew, under a promise of secrecy and protection. The prisoner's agent had requested Dundas to send back his client's letter; and Dundas had replied that he had sent them all to the Lord Advocate. Watt had corresponded with the Lord Advocate in 1792 and 1793, and had been, on more than one occasion, in his house. Money had been paid to him for intelligence about the reformers; and it was maintained by Erskine that, when he was arrested, he had not had time to complete his work as spy. In spite of many circumstances which supported the theory of the defence, the prisoner was, after a trial which lasted five days, found guilty and sentenced to death.

Downie was next brought to the bar. In this case also the Lord Advocate obtained a conviction.[1] Sentence of death was passed; but the jury recommended him to mercy,

[1] State Trials, xxiv. 1-200.

and he was respited. So strong was the desire for blood among the supporters of Government in Scotland that, on receiving notice of the respite, the Lord Advocate wrote to his uncle, "I am convinced, from anything I have heard since my return here, that the respite to Downie will be very generally disapproved."[1]

Two days after this letter was written the last scene was enacted. The convict Watt was taken from the Castle of Edinburgh to the Tolbooth, seated backwards on a hurdle painted black, and with the executioner, clothed in black and bearing an axe, seated beside him. On the scaffold the condemned man knelt in prayer for a few moments, and then gave the signal, and was hanged. His body was cut down, and laid upon a table. The hangman advanced and raised his axe. A scream of horror rose from the spectators; many turned and rushed from the spot, while the dead man's head was hacked off and held up to view, and the executioner said, "This is the head of a traitor!"

The State Trials were at an end; and the rest of Lord Advocate Dundas's term of office was passed in less exciting scenes. In 1801 he succeeded Sir James Montgomery as Lord Chief Baron, and retained his seat on the bench until his death, which happened on the 17th of June 1819.

[1] Lord Advocate to Mr. Secretary Dundas, 13th October 1794, Scot. MSS. Record Office.

CHAPTER XVII.

HOPE, MONTGOMERY, AND COLQUHOUN.

CHARLES HOPE of Granton became Lord Advocate when Robert Dundas was appointed Lord Chief Baron. He was the eldest son of John Hope, grandson of the first Earl of Hopetoun, and was thus one of the many descendants of Sir Thomas Hope, Lord Advocate to Charles the First, who have risen to eminence at the bar of Scotland.

Hope was called in December 1784, became a strong adherent of the Dundas party, and in 1792 was made Sheriff of Orkney.

He was not conspicuous as a lawyer, but the devotion with which he served his party was untiring. He was always planning the means by which its supremacy was to be maintained; and he could be counted upon to assist Lord Advocate Dundas when a speech was needed; for his chief accomplishment was public speaking. In this he excelled all the other members of the Tory party. His voice, according to Lord Cockburn, was surpassed by that of Mrs. Siddons alone. His manner was natural, and his words were well chosen. He was "the tongue of the party, and in the van of all its battles."[1] His political virulence was extreme. He was a violent Tory; but if he had been on the other side, he would have been a violent Whig; for his impetuous character made it impossible for him to espouse any cause with moderation.

[1] Cockburn's Memorials.

Nor did he confine his energies to politics. When the Volunteer movement began during the French war, Hope, at that time Sheriff of Orkney, enlisted as a private in the First Regiment of Royal Edinburgh Volunteers. In 1801 he was appointed Lieutenant-Colonel, and performed the duties of that office, both before and after he was Lord Advocate, with such enthusiasm that many people in Scotland knew him better as a soldier than as a lawyer.

In 1801 Lord Advocate Dundas was made Lord Chief Baron, and Hope became Lord Advocate. In the following year he was returned to Parliament for the Dumfries burghs; and in 1803 he became member for Edinburgh in place of Henry Dundas, who had recently been called to the Upper House.

He was Lord Advocate for three years and a half, and during his term of office conducted through the Commons the Schoolmasters Act of 1803.[1] By this Statute heritors were compelled to erect houses containing two rooms for the schoolmasters. But Hope was in advance of the other Scottish members. One room, it was thought, should be enough; and the majority of lairds were angry at the Advocate for forcing them to erect "palaces for dominies."[2]

Hope's official correspondence with Government is chiefly remarkable for its brevity. His letters are short and hastily written, as a rule. But an exception is found when his military enthusiasm is roused. When requested to investigate what promises had been made to Highlanders enlisted for a regiment to serve in Canada, his answer is very different from his other brief communications. The Earl of Moira, a General in the army, sends a short letter to the Government containing his views. Hope plunges into the question, and favours the Secretary of State with

[1] 43 Geo. III. cap. 54.

[2] Cockburn's Memorials.

a voluminous report. He gives an account of the state of the Highlands; goes minutely into a number of points; and shows how the regiment had been raised by low crimps, who had made the most extravagant promises. Each soldier, the Highlanders had been told, was to have a cow kept for him, and so many acres of land. The poor Highlanders thought they were to be allowed to carry their "families" with them, and the word "family" was construed in a liberal sense. One man had made arrangements for taking his grandmother, mother, father, children, brothers and sisters with him when he sailed! Hope strongly advises disbanding the regiment.[1]

On the 17th of October 1803 a review took place at Edinburgh, in which the volunteers took part under the command of the Lord Advocate. On the following day he issued a "Regimental Order," which shows in an amusing way the minute attention he bestowed on military details. After congratulating his men on their appearance, and reminding them that the object of their labour was not parade, but fighting in defence of their country, he gives orders for actual service of a most practical character. The alarm post was to be the north side of St. Andrew Square, to which each volunteer was to go with four and a half pounds of biscuit or bread. Officers and men were to fare alike, and carry all their baggage on their backs, "of which the Lieutenant-Colonel shall set the example, never mounting his horse, but for the purpose of command." Each article of clothing was prescribed, one rule being that no one, officer or private, was to take the field "unless he is provided with a flannel underdress." When camping out, the volunteers, if wet, were ordered to change their shoes and stockings, and rub their bodies with spirits, "taking at the same time a mouthful,

[1] Scot. MSS. Record Office.

not more." Minute directions were given for meeting an enemy in the field or opposing a landing.[1]

Lord Advocate Hope's martial spirit, which made him regard any interference with the volunteer movement as a serious offence, brought him into trouble, and led to a vote of censure being moved against him in Parliament. A farmer of good position in Banffshire, named Morison, dismissed one of his servants, named Garrow, for having, contrary to his orders, left his work to attend drill with a volunteer corps. The servant laid his case before the Lord Advocate for opinion, stating that Morison had engaged him to serve for six months at a wage of six guineas, that he had entered a volunteer corps without the knowledge of his master, that he was, however, allowed to attend drill regularly from August till October, that on the 12th of October he attended an inspection by the Marquis of Huntly, and that on the following day he was dismissed for having done so. He wished the opinion of the Lord Advocate whether he should demand his wages merely up to the 13th of October, the day of dismissal, or whether he should demand them for the whole time for which he had been engaged. The Lord Advocate gave the following opinion: "However unprincipled and oppressive Mr. Morison's conduct seems to have been, I am afraid that the memorialist has no claim against him except for wages up to the day that he was dismissed from his service, to which he is certainly entitled."

This opinion was given by Hope, not as Lord Advocate, but as a counsel in the course of ordinary practice. But he wrote at the same time, to the Sheriff-Substitute of Banffshire, an official letter in which he spoke of Morison's conduct in the most severe terms. Every means, he said, should be taken to punish him: he should be held up to the scorn and contempt of all respectable men; and all persons

[1] Cockburn's Memorials.

should refuse to have any dealings with him. But this was not all. The Sheriff-Substitute was ordered, "on the first Frenchman landing in Scotland," to apprehend Morison as a suspected person. He was not to be liberated without a warrant from the Lord Advocate. Finally, the Sheriff-Substitute was to inform him that the Lord Advocate would, in the event of an invasion, do all he could to prevent him receiving compensation for any part of his property which might be injured by the enemy.[1]

In June 1804 Mr. Whitbread brought the subject before the House of Commons, and moved that the conduct of the Lord Advocate had been "oppressive, illegal, and contrary to his professional duties." The case against Hope was strong. By the Act of 1701 no man in Scotland could be imprisoned without being informed of the ground of his imprisonment. Yet he had ordered the arrest of Morison, if an invasion took place, on mere suspicion. He had also recommended that Morison should, for doing what was a perfectly legal act, be expelled from society; and he had declared that, if Morison's property was injured by the chance of war, no compensation would be given to him. Hope defended what he had done by maintaining that it was his duty, at a time when the country was at war, and in danger of invasion, to exercise powers which it might be imprudent to exercise during peace. An invasion, he said, was expected from day to day. "It was under such circumstances and such impressions that I sat down to consider the case of Morison, and in the answer which I gave to the memorial submitted for my opinion, as well as in the letter to the Sheriff of Banffshire, I certainly did deliver my sentiments under the impression that the enemy might have landed in Scotland even before my letter reached its destination."

But Hope's defence was listened to with most attention

[1] Parl. Debates, ii. 788.

when he proceeded to explain his views as to the office of Lord Advocate. His opinion was that, in point of law, all the powers which had belonged to the executive government of Scotland before the Union were now vested in the Advocate. "They, sir," he said, "who judge of the office of Lord Advocate for Scotland by a comparison with the dry, formal office of Attorney-General in this country, have indeed formed a a most erroneous opinion on the subject. The honourable gentleman has professed his inability to explain to the House the various and complicated duties of this office. I wish that I could, within any reasonable compass, define its duties, and then I can assure the House that though extensive, almost beyond conception, they would afford me ease and retirement, compared with the endless succession of duties which now successively pass under my review. It will be necessary for me to say a few words here respecting the executive government in Scotland previous to the Union. At that period the Lord High Chancellor, the Lord Justice-General, the Lord Justice-Clerk, the Lord Privy Seal, and the Lord Advocate, were the constituent members of Administration. From a variety of causes these have successively disappeared. The Lord High Chancellor is no longer in existence. The Lord Privy Seal exists merely for the purpose of appending the Seal of Scotland. The Lord Chief-Justice General is the mere nominal head of a Court at which he never presides. By a special Act of Parliament the Lord Justice-Clerk can have no seat in the House, and is wholly confined to his own Court. Under these circumstances, sir, *the whole of the duties connected with these various departments have now entirely devolved on the Lord Advocate of Scotland.* To him all inferior officers look for advice and decision, and with the greatest propriety it may be said that he possesses the whole of the executive government of Scotland under his particular care. I, sir, have found in

my own experience how boundless are the duties which this office imposes. It has fallen to my lot in a thousand instances not only to give advice on subjects connected with my professional pursuits, but on subjects altogether foreign from my habits of life. I have often been under the necessity of giving advice on matters purely military, and to endeavour to remove difficulties which had occurred in arranging the means of national defence. I may state, without exaggeration, that since the first passing of the Acts for the defence of the country, I have given to Lord-Lieutenants and others employed in carrying these Acts into effect, no less than eight hundred opinions on the subject of military arrangements. This I have been called to do from the difference of habits and manners in different districts of Scotland, to which no general legislative opinion could ever reach."[1]

He ended his speech by alluding to the Act of 1701, the Habeas Corpus Act of Scotland. He admitted that, in ordinary times, no one could be imprisoned in Scotland without knowing of what he was accused. But he pointed out that times of invasion or rebellion were specially excepted in the Act. At such times warrants might be issued by five members of the Privy Council. But the Privy Council of Scotland was abolished; and, he argued ingeniously, as the Lord Advocate came in its place, he must have the right to issue warrants when he thought it necessary.

That the Lord Advocate of Scotland possessed the powers claimed by Hope was neither admitted nor denied by the Opposition. Some members expressed their astonishment at the "extraordinary powers" with which he was invested: but no attempt was made to discuss the question on legal or constitutional grounds. A long debate took place on the facts of the case; and at three o'clock in the morning the

[1] Parl. Debates, ii. 801, 802.

House divided, when Whitbread's motion was defeated by a large majority.[1]

Lord Cockburn says that when Hope went back to Scotland, an English newspaper contained a paragraph to the following effect:—"Arrived at Edinburgh the Lord High Chancellor of Scotland, the Lord Justice-General, the Lord Privy Seal, the Privy Council, and the Lord Advocate, all in one post-chaise, containing only a single person." In England, where Grand Juries did the work which, by the law of Scotland, was done by the Lord Advocate and his Deputes, and where personal freedom was jealously guarded, it seemed incredible that powers so extensive as those claimed by Hope could belong to any one Officer of State. But in Scotland, where the Lord Advocate had been for so many years the chief representative of Government, Hope's ludicrous speech was accepted merely as a statement of fact.

In October 1804 Sir David Rae of Eskgrove, who had succeeded the notorious Braxfield as Lord Justice-Clerk, died. The vacant place was offered to Hope. He did not at once take it, but, in the most generous spirit, placed it at the disposal of Henry Erskine, his political opponent. Erskine, however, was not appointed. Hope then resigned the Lord Advocateship, and took his seat as Lord Justice-Clerk on the 6th of December 1804.[2]

After his appointment to the bench he had for some time to suffer for his impetuosity in attacking Morison. His extraordinary letter to Sheriff-Substitute Forbes had been recorded in the books of the Sheriff-Court of Banffshire, where, unless it was cancelled, it would remain in all time coming. Morison desired some reparation, and was informed by counsel that legal proceedings, in the shape of an action of damages, would probably be successful. But before doing so he wrote as follows to Hope: "I feel myself

[1] Parl. Debates, ii. 817.

[2] Brunton and Haig, 545.

under the painful necessity of addressing your Lordship on a subject which has been the source of great uneasiness to me and my family for some time past. I have been daily expecting some measures would have been adopted for taking off the foul aspersions thrown on my character, and in that expectation I have deferred attempting any mode of redress further than consulting two eminent lawyers in Edinburgh, whose opinions are no doubt favourable.[1] But still I am averse to legal measures, and would much rather appeal to your candour and justice than to courts of law. In this corner, thank God, I am too well known, and my character too well established, to be hurt by such false imputations; but in more distant circles my good name may be tarnished, and I attach too much value to the character of a good citizen and loyal subject to think light of either. Your Lordship, then, must at once see that I cannot sit easy down with your denunciation recorded in the county register in which I live. I was, and still am, satisfied your order to the Sheriff proceeded on false representations, and had you known my real character, I 'm convinced you would have heartily espoused my cause against any man or set of men who would have attempted to traduce or defame me. I would therefore humbly submit to your Lordship the propriety of adopting the best means of wiping off this stigma from the county record. Your Lordship is the best judge how this is to be done; and I trust you will,

[1] One of the counsel consulted by Morison was probably Mr. Archibald Fletcher, who is best known as the great champion of Burgh Reform. This appears from a letter written to Morison's agent, a Mr. Tillery, by his Edinburgh correspondent, Mr. Andrews. "I had thoughts," he says, "of the Honble. Mr. H. Erskine, but am apprehensive that pressure of business may prevent him, or perhaps he may have some scruples on account of his being one of the ordinary lawyers for the Hopetoun family. Mr. Fletcher is a man of good abilities and application, and I am inclined to think, from his being a zealous lover of liberty and independence, would do our client full justice." The letters and other papers relating to this episode in Lord Advocate Hope's life are in the possession of Mr. Alexander Morison, Solicitor before the Supreme Courts in Scotland, who has kindly placed them at my disposal.

at your first convenience, give such directions to the Sheriff as may best effectuate its execution. In consequence of your Lordship's directions I gave up the question with my servant and paid him his wages, as I understood it was the only bar to my vindication."

This letter is dated 30th November 1804. On the 5th of December, the day before he took his seat on the bench, Hope wrote to Morison what, coming from a man of his passionate character, was virtually a letter of apology. "You could not possibly," he said, "be more surprised, and certainly not more angry than I was, when I learned, which I first did from Mr. Whitbread's notice, that my letter to the Sheriff had been put into the record. As I afterwards stated to the House of Commons, I should as soon have expected, if the Sheriff had found in the street a letter from me to my wife, that he would have put *that* into the record. I gave him no authority for it. On the contrary, on looking at my letter, you will find that I only say that he may show it to you. He put it there entirely by his own authority, for I had no power to order such a writing to be put in the record, even if I had wished it, and as little power have I, either as Advocate or Justice-Clerk, to order it to be expunged from the record. I think you are now vexing yourself about the matter more than it deserves, for, in fact, the record is perhaps the place of all others where it will be less noticed either by the present generation or by posterity. Nobody looks at the Sheriff-Court books but a few writers, on law business, who have no time to read anything that does not concern them. If the matter has become public, you owe it to the officious zeal of those false friends who conveyed the matter to Mr. Whitbread, and not to me, who never intended it to go further from the pocket of the Sheriff. I think your proper mode of proceeding is to give in a petition to the Sheriff to

crave that he may order it to be expunged as a writing which he had no authority to insert, and which, in its own nature, was not a registrable writ. The Sheriff, if he is wise, ought not to hesitate a moment. But if you think that my opinion will have any weight with him you may show him this letter, which I think he cannot misunderstand. I am glad that you have settled matters with your servant, because I am persuaded that, on cool reflection, you must be satisfied that your conduct was harsh to him, and of discouraging tendency to the Volunteer system."

With this letter Morison was satisfied. But his legal advisers were evidently disappointed at losing the chance of conducting a law-suit against so eminent a personage as the Lord Justice-Clerk. The town agent writes a private letter to his correspondent in the country, lamenting what he considered their client's want of spirit, and condemning Hope's apology as wholly insufficient. "If he intended," says Mr. Andrews, "as he now says, that the letter should go no further than the Sheriff's pocket, then[1] was the proper time for him to have disapproved of the Sheriff's proceedings, in place of which he, by his line of conduct, gave them the sanction of his approbation, and did not, as he now does, advise the Sheriff to expunge that scandalous piece of composition from his records. Some of his arguments appear to me to be extremely futile and frivolous, particularly his letter not being a registrable writ, and the records of a Sheriff so little interesting that no person ever thinks of looking into them excepting a few practitioners in the law. However, if our client himself is satisfied with this apology and with the weight of his Lordship's arguments, it is nobody else's concern. You and I have done our duty by obtaining for him the advice and opinion of respectable,

[1] When he first knew the letter had been recorded in the books of the Sheriff-Court.

intelligent, able, and impartial lawyers, and it rests with himself alone to determine whether he will abandon or follow out his right in the manner which they have pointed out."

Morison had the good sense to let the matter drop, and ceased to molest the Justice-Clerk on the subject. But the occurrence led to a long and acrimonious correspondence between Hope and Sheriff-Substitute Forbes. Forbes maintained that from the first he had thought Hope's letter dangerous, and defended his conduct in putting it on record. He threatened to publish the correspondence; and at last the controversy, which had been a source of infinite trouble to Hope, was brought to a close by the following characteristic letter which he addressed to Forbes:—

"I received your letter of the 29th when I was in East Lothian, on a visit during the Holydays. Last week, besides being on the Bills, we had several Justiciary trials, so that I have not till now been able to find time to answer your Letter.

"I must begin by requesting that our correspondence may now end, whatever else you may resolve to do. On that subject, I am not a little surprised at your saying, that 'as I have thrown down the Gauntlet, you will not decline the contest, and that your printing or not will depend upon my answer.' Now, Sir, I beg you will take the trouble of recollecting that it was you who, in your first Letter, talked of printing and appealing to the publick, and that I never alluded to the subject, except by requesting that, if you did print, you would print my Letter, and so save me trouble. I therefore beg that you will not suppose me to be the author of a threat, which came from yourself, and farther I request, that your printing or not may not depend on this answer. I request that you will do exactly in that matter as you think most for your own interest. To me it is a matter of perfect indifference.

"I forbear to make any remarks on the style of your letter, which is offensive in the extreme.

"Neither shall I say any thing on my own temper, or on the manner in which, during the time I had the honour to be His Majesty's Advocate, I received all manner of persons coming to me on public business, or on the subject of official orders I had given to them. I only beg leave to state to you, that because I felt, and expressed to you some indignation at your presuming to send to me an insolent and threatening message, and still more at your soliciting the Deputy Clerk of Justiciary, or rather my own Clerk, to be the Bearer of that message, I think it is a very odd conclusion to draw, that I am necessarily such a formidable and unapproachable Being, that you, or any other publick Officer, cannot wait on me, or write to me, to ask a very simple question, whether I intended an official order to be put on the record of your Court. You talk always of remonstrating against that Letter. But that is not the point. Whether the Letter was right or wrong was certainly my affair, and I blame you as little for not remonstrating as I believe I should have done, if, viewing it in the dangerous light as you say you instantly did, you had remonstrated out of regard for me. Neither, Sir, in one sense of the word, do I blame you, nor did I ever blame you, merely for puting the letter on record. I was angry at it, no doubt, as being done without authority from me, and as having occasioned to me much fatigue, loss of time, and heavy expence. But I never dreamt of blaming you in the sense of ascribing your conduct to any improper motive. I really supposed that you had done it merely from thoughtlessness, joined to great zeal for the Volunteer service. But what I now lay to your charge, and what I blame you for, is the accusation you have brought against yourself, viz. That viewing my Letter as one of a most extraordinary kind, and which was likely

to bring, and which you say a friend of great judgement told you would, or might, bring to danger all persons concerned in it, you did immediately set about, cooly and cautiously, to devise for your own security, and did instantly adopt and execute for your own safety, the very means most likely to bring on me the danger you foresaw and wished for yourself to avoid, and this without any authority from me in the letter, and without asking whether I intended that my letter should be so used.

"This is not a charge which *I* have brought against you. I declare before God that it did never enter into my imaginations. You have avowed it yourself, and, strange to tell!! avowed it in a Letter accusing me of sacrificing you to screen myself.

"Now, Sir, I presume to think that this was wrong in itself, and would have been equally so tho' neither Mr. Whitebread nor any other person had taken up the matter. I never was in the least angry at you for the Parliamentary consequences, for I have the satisfaction to know that I did not lose character either with my friends or my Opponents. No doubt I was a little angry at the Journey of 800 miles, and the trouble and expence which it cost me; but as to the accusation, it never gave me one moment's uneasiness. But, Sir, the result does not do away the charge you have brought and indeed confessed against yourself. You *believed* the Letter to be a most illegal one, so you avow, and that a friend confirmed this to you; therefore *believing* this, you ought not to have taken any step for your own security, not authorised by the letter itself, without recurring to me for fresh instructions.

"I shall not enter upon the other matter in your letter, for which I really have not time. I shall only just mention that you are mistaken as to Mr. George Andrew. He did speak to me about my letter, and said a good deal about

Mr. Morison's character, and hoped I would do away my order; but on my asking if Morison had paid Garrow his wages, and was sensible of his error, and geting an answer in the negative, I cut the matter short, and declined to interfere. But Mr. Andrews, so far as my memory goes, never said a word about the record, or shewed me any copy of the Letter. Indeed the last would have been very superfluous.

"I again repeat that I beg you will take any future measures you please, without farther reference to me, only I would advise you to think well, and consult your ffriends, especially your Constituent, and if after doing so you think that your character will gain by an appeal to the publick, I can have no possible objections, for sure I am that such appeal, if accompanied with this and my former letter, will not injure mine."

He still continued to act as Lieutenant-Colonel of the Edinburgh Volunteers, and, when on Circuit, delighted to encourage a warlike spirit among the magistrates of the towns which he visited. "A Briton," he once declared in Glasgow Circuit Court, "is the noblest of created beings, and this contest, if we continue true to ourselves, will make us the noblest of Britons."[1] In 1807, on the King's birthday, Hope was presented with a sword of honour by the Volunteers. "With respect to the present you have made me," he said in returning thanks, "I hope and trust, for the sake of our country, that I may never have occasion to use it but on occasions such as this, of parade and rejoicing; but if against the enemies of our King and Country, I have only to pray that I may be enabled to behave as becomes the Commander of such a regiment."

In 1811, on the death of Lord President Blair, Hope became head of the Court. In 1836 he was made Lord

[1] Scots Magazine, lxx. 636.

Justice-General;[1] and at the proclamation of Queen Victoria he appeared in the robes of this ancient office.[2] For thirty years, from 1811 to 1841, he presided in the Court of Session with distinguished ability.

Previous to the passing of the Reform Bill the judges had enjoyed the privilege of appointing the doorkeepers of the Court of Session. Certain changes in the constitution of the Court had rendered the staff of these officials wholly insufficient. The great hall known as the "Parliament House," and the various court-rooms, were never properly cleaned, and the judges performed their duties in the midst of dirt and discomfort. They complained to Government, but resisted the determination of the authorities, which was to increase the staff, but to deprive their Lordships of the right of appointment. Hope, as usual, was vehement on the subject, and one of his last official letters was a final appeal against the proposed change. "If," he writes to Mr. Maule in 1838, "you have irreversibly made up your mind on the mode of appointing the Door Keepers of the Court of Session, I need not endeavour to alter your Opinion. But at all events, do not put it to Lord John on the footing which you state to me, that you 'attribute much of the State into which the Courts have fallen to the practise of putting *faithful old servants* into the situations which you require.'

"Now this is not correct in point of fact. Our present state has arisen, not from the mode of appointment by the Court, but from the utter deficiency of hands. If the appointment had been all along in the Government, the effect would have been the same, if, with increased necessity

[1] By an Act of Parliament (1 Will. IV. cap. 69), passed in 1830, it was provided that, "after the termination of the existing interest in the office of Justice-General," it should devolve upon the President of the Court of Session. James, third Duke of Montrose, was Justice-General in 1830. He died in December 1836, and Lord President Hope succeeded him in terms of the Act of Parliament.

[2] Kay's Portraits, ii. 253.

for more hands, they had given us fewer. Till the new Courts were completed and brought into use 3 or 4 years ago, we had strength sufficient by two Door Keepers. We had then only the Outer House, 2 Courts, and a Robing room, without the Accommodation of another single room for any other Cause. We have now 3 great Court Rooms, besides the Outer House and Robing room, with the addition of 12 or 14 rooms for Issue Clerks, and Jurymen and Witnesses, beside 4 small Court rooms for the Ordinaries in the Outer House, in all of which fires have to be lighted in Winter, and the rooms well swept and dusted. And to do all this we have had to work with diminished numbers, instead of more. Besides, you run away with my expression of faithful old servants, as if a Man to be a good old Servant must of necessity be an Old Man. Now that has not been the case. The Man who died last was in the prime of life, and the Survivor, who is now superannuated, is so, not because He was too old a Man when He was appointed, but because He has been many many years in Office, and we had no superannuation fund on which to pension him off. But, my good Friend, What would be the effect of vesting the Nomination in the Treasury or Secretary of State? How could they, living in London, find out proper persons in Edin^{r} to fill these petty Offices? Is it not plain that they must be recommended and suggested to them by some persons here? And thus, instead of the appointment being allowed to continue in the Heads of the Court, who are most interested in having the Courts and other rooms kept in proper order, it would come to be in the Nomination of the Lord Advocate (which would not be so bad) or very likely in the Member for the City or County. I have no objection to your saying that our Nominees should not be above a certain Age, say 30 or 40. I think 30 too young to secure Steady and Trust Worthy Men. The rule for the

Customs and Excise does not apply to us, for those people have Active and laborious Out door Work. However, if you have made up your Mind, I can't help it. Only remember that the Man Henry Carse, who was appointed 3 or 4 years ago by the Justice Clerk and me, must at all events be continued, and well he deserves it, for during our present crippled state He has worked like a Turk, and is a most respectable and Trust Worthy Man."[1] He adds a postscript: "Keep this, for my exoneration with my Colleagues, if necessary."

In 1841 he retired, and was succeeded by Lord Justice-Clerk Boyle. His eldest son, John Hope, took Boyle's place as a judge; and ten years after he left the bench Charles Hope died, on the 30th of October 1851.

The author of "Peter's Letters to his Kinsfolk" gives a graphic description of Lord President Hope's bearing on the bench, with which I shall close this brief sketch of his career. The scene described took place when the President had occasion to rebuke a solicitor who had been guilty of some professional misdemeanour:—"At length he lifted up his eyes, and at a signal from his hand, a man clad respectably in black rose from the second row of seats behind the bar. I could not at first see his face, but from his air I perceived at once that he was there in the capacity of an offender. A minute or more elapsed before a word was said, and I heard it whispered behind me, that he was a well-known solicitor or agent of the Court, who had been detected in some piece of mean chicanery, and I comprehended that the President was about to rebuke him for his transgression. A painful struggle of feelings seemed to keep the judge silent, after he had put himself into the attitude of speaking, and the silence in the Court was as profound as midnight, but at last, after one or two ineffectual

[1] Scot. MSS. Record Office, 1838.

attempts, he seemed to subdue his feelings by one strong effort, and he named the man before him, in a tone that made my pulse quiver, and every cheek around me grow pale.

"Another pause followed—and then all at once the face of the judge became flushed all over with crimson, and he began to roll out the sentences of his rebuke with a fervour of indignation that made me wonder by what emotions the torrent could have been so long withheld from flowing. His voice is the most hollow and sonorous I ever heard, and its grave wrath filled the whole circuit of the walls around, thrilling and piercing every nerve of every ear, like the near echo of an earthquake. The trumpet-note of an organ does not peal through the vaults of a cathedral with half so deep a majesty; and I thought within myself that the offence must indeed be great, which could deserve to call down upon any head such a palsying sweep of terrors. It is impossible I should convey to you any idea of the power of this awful voice; but, never till I myself heard it, did I appreciate the just meaning of Dante, where he says, '*Even in the wilderness, the lion will tremble, if he hears the voice of a just man.*'"[1]

Sir James Montgomery, author of the Montgomery Entail Act, died in 1803, having survived his eldest son, Colonel William Montgomery, member for Peeblesshire, for three years. His second son James, who inherited the title and estates, was called to the bar on the 28th of July 1787, and, on the death of his brother William, was elected member for Peeblesshire in December 1800. At the general election of 1802 he was again returned for that county. When Hope went on the bench there was

[1] Peter's Letters to his Kinsfolk, ii. 104, 105.

no leading member of the Scottish bar in Parliament, and Sir James Montgomery was appointed Lord Advocate. He held office till 1806, when the Ministry of "All the Talents" came in, and Henry Erskine took his place. Montgomery was never again in office; but he was returned for Peeblesshire at each of the seven general elections which took place between November 1806 and March 1831, when he took the Chiltern Hundreds. He died on the 27th of May 1839, and was succeeded by his eldest son, Sir Graham Graham Montgomery. Sir James Montgomery's life was uneventful. He was Lord Advocate for only fifteen months; and no speech of his is reported in the Parliamentary Debates, either at that time, or during his subsequent career in the House of Commons.

When the short-lived Ministry of "All the Talents" came to an end in April 1807, and the Tory party returned to power, Archibald Campbell of Clathick, who soon afterwards took the name of Colquhoun on suceeeding to the estate of Killermont, became Lord Advocate. He had been at the bar since 1768, and was in good practice. Lord Cockburn, then an advocate of about seven years' standing, was in London when the change of Ministry took place. He has recorded an incident which shows how completely the patronage of all Scottish affairs was absorbed by the Dundases at that time. The Depute Advocates were chosen by Lord Melville before the Lord Advocate knew of his own appointment. Cockburn, although a Whig, was offered one of these places. When he hesitated on account of his political feelings, he was told that the offer was made solely on personal grounds, and that the Advocate had not yet received his commission. "After some more kindly expostulation, I yielded," says Cockburn, "though in doing so I had

considerable misgivings as to the result."[1] Lord Advocate Colquhoun was in office till the summer of 1816. He was returned to Parliament for the Elgin burghs in May 1807, and for Dumbartonshire in October 1812. In purely Scottish business his position gained him a hearing, but on other occasions his success as a speaker was not great. He rose to take part in the debate on the conduct of the Duke of York, in March 1809. He began amid shouts of "Question," and before long, according to the reporter, "the House became so clamorous for the question, that the honourable member could no longer be heard."[2]

Lord Advocate Colquhoun succeeded in reforming the constitution of the Court of Session. Lord Grenville's bill was abandoned when the Whigs went out.[3] But for some years the state of the Court had been censured; sometimes in most exaggerated terms. "It would be a happy thing for Scotland," exclaimed Campbell, who was then studying for the English bar, "if her Courts of Justice were all new modelled, and instead of the fifteen corrupt old wives that now doze in the Court of Session, two or three good lawyers and honest men were sent down from England. . . . Indeed it is the pure and expeditious administration of justice that chiefly distinguishes England from Scotland, France, and other despotic countries in Europe. 'A very pretty insinuation.' But according to the Lord Advocate's statement (in which he is supported by the nation itself) he is altogether as absolute as the Emperor Napoleon, and I do believe that there is at this moment more liberty of opinion in Paris than in Edinburgh."[4] The introduction of Lord Grenville's bill

[1] Memorials. The other Deputes were Alexander Maconochie, afterwards Lord Advocate, and William Erskine, afterwards promoted to the bench as Lord Kinedder.

[2] Parl. Debates, xiii. 577.

[3] *Supra*, p. 172.

[4] Lord Campbell to his father, 2d Aug. 1804; Life of Campbell, i. 154.

had still further attracted notice to the subject, on which the Duke of Portland's Ministry now determined to legislate.

The first step taken was to consult the Scottish judges. On the 23d of April 1807, Lord President Campbell, Justice-Clerk Hope, and three other judges, appeared at the bar of the House of Lords. They were permitted to sit, and a number of questions were put, to which they were requested to return written answers.[1] Would the Division of the Court of Session into two or three chambers conduce to the speedy and correct administration of justice? Would a division of the Court into two chambers, consisting of eight and seven judges respectively, render such chambers equal in the estimation of the country? or would three chambers of five judges each be better? Should there be a Court of intermediate appeal between the Court of Session and the House of Lords? Should trial by jury in civil causes be introduced into Scotland? "Would not the superior emulation and responsibility of the judges, if the Court was divided into three chambers consisting of five judges each, added to the opportunity of more fully considering the cases that come before them, tend manifestly to the better and more speedy administration of justice?"

The answer given to the last of these questions suggests that the judges resented it. "We lay," they said, "very little stress on the effect expected from emulation, as the feeling of our minds, and the principles upon which we act, will lead us to perform our duty in the same manner, whatever the number of chambers may be, and the responsibility will be the same in either case." They were in favour of two chambers rather than three; they were opposed to an intermediate Court of Appeal; and on the question of trial by jury they gave no definite opinion. In August Lord Eldon brought in a bill dealing with the Scottish Courts. It pro-

[1] Parl. Debates, ix. 515-518.

posed that there should be two chambers or Divisions. The First Division was to consist of the Lord President and seven judges, the Second of the Lord Justice-Clerk and six judges. No appeal to the House of Lords was to be allowed except from a final judgment of one of these Divisions, unless with the special leave of the Division from which the appeal was to be taken. Commissioners were to be appointed to inquire into the administration of justice in Scotland, one of the subjects which they were to report on being the question of trial by jury in civil cases. Copies of the Lord Chancellor's bill were sent to the judges, the Dean of Faculty, the conveners and sheriffs of counties, and to the magistrates of royal burghs.[1]

On the 23d of December the Faculty of Advocates held a special meeting, when resolutions approving generally of the proposed change were agreed to. The appointment of a Commission was pronounced to be highly expedient; and, by a majority, it was resolved "that the introduction of jury trial in certain civil cases would be for the evident utility of the subjects within Scotland."[2] At this meeting the Lord Advocate was present; but the late Lord Advocate, Henry Erskine, did not attend. Lord Grenville's bill had been approved by the Faculty, and, as Lord Eldon's measure differed from it in many respects, Erskine and several of his friends were strongly opposed to the objects of the meeting. A correspondence of some length took place between Colquhoun and Erskine on the subject, which, however, is now of no practical interest.[3] After full discussion in Parliament and in the country the bill became law.[4] The Court of Session was divided into the two Divisions. Instead of the present system of four judges in each, the Act of 1808 provided that there should be eight in the First Division,

[1] Scots Magazine, lxx. 71.
[2] Minutes of Faculty, 23d Dec. 1807.
[3] Scots Mag., lxx. 70-72, 149-152.
[4] 48 Geo. III. cap. 151.

including the Lord President, and seven in the Second, including the Lord Justice-Clerk. Two judges, one for each Division, were to sit each week in the Outer House. The Court sat as one chamber for the last time on the 11th of July 1808.

The Act provided that Commissioners should be appointed to report on the administration of justice in Scotland. Mr. Horner proposed that they should be named by Parliament and not by the Crown; but the Lord Advocate and the Solicitor-General for Scotland opposed this, and the motion was lost. Commissioners, at the head of whom was Sir Ilay Campbell, were appointed; and the result of their reports was a number of useful reforms in the procedure of the Court. One of the points to which the attention of the Commissioners was specially directed was the proposed introduction of trial by jury in civil cases, which, at one time the common practice of Scotland, had gradually fallen into disuse. In May 1810 the Commissioners reported in favour of the proposal; but nothing was done till 1815.[1] In that year an Act passed which established the Jury Court, consisting of three "Commissioners," whose duty was to try civil cases with a jury.[2] The Right Honourable William Adam of Blairadam was appointed Chief Commissioner; and the first suit raised in the Jury Court (an action to suppress a nuisance) was tried on the 22d of January 1816.[3] Fifteen years later the Jury Court was abolished.[4] Its functions were then merged in those of the Court of Session, the judges of which now preside at jury trials.

In June 1816 Lord Frederick Campbell, Lord Clerk Register of Scotland, died. The friends of Henry Erskine hoped that the office might be given to him; but the Lord

[1] Mackay's Practice of the Court of Session, i. 33.

[2] 55 Geo. III. cap. 42.

[3] Treatise on Trial by Jury in Civil Causes, by the Right Hon. W. Adam, Introd. p. 6.

[4] 1 Will. IV. cap. 69 (1830).

Advocate's claim was pressed on Government so strongly that it could not be refused, and he became Lord Clerk Register. In spite of Colquhoun's undoubted talents, the appointment was disapproved of, even by the supporters of Government. "The complaints," says the biographer of Erskine, "about the appointment were general. Robert Dundas writes to Chief-Commissioner Adam, from Batty, 21st March 1817: 'When I saw Colquhoun's appointment was determined on, I urged a joint appointment to him and Henry Erskine, not only on account of the latter, but that the nomination of a man so generally beloved and respected, and of such rank and family, would take off part of the odium so generally attached to the nomination of Colquhoun alone.' Charles Hope from Dawlish writes in high anger on the same subject: so does Mr. Adam from Blair Adam."[1]

On his appointment as Lord Clerk Register, Colquhoun was re-elected for Dumbartonshire, and sat in Parliament for that county till his death, which took place on the 8th of September 1820.

It has already been mentioned that one of the Deputes appointed when Colquhoun became Lord Advocate was William Erskine, afterwards Lord Kinedder.[2] Erskine, the son of an Episcopalian clergyman in Perthshire, had one sister, who was married to Colquhoun a few years after he came to the bar. The Erskines were related by marriage to the good old Perthshire family of Oliphant of Gask; and Mrs. Colquhoun had been, from childhood, the friend and companion of Carolina Oliphant, best known as Lady Nairne. It was on the death of the Colquhouns' infant daughter that Lady Nairne, then Miss Oliphant, wrote "The Land o' the Leal," the most touching of all her poems. Mrs. Colquhoun survived her husband, and died in 1833.[3]

[1] Fergusson, Life of Erskine, 531, 532.
[2] *Supra*, p. 225.
[3] Rogers, Life and Songs of the Baroness Nairne, 181-184.

CHAPTER XVIII.

LORD ADVOCATE MACONOCHIE.

In the year 1816 a change came over the political state of Scotland. The leaders in the Reform movement of 1793 had been crushed by the merciless sentences of Lord Braxfield; and the excesses of the Republican party in France had led the majority of Scotsmen to look on the Justice-Clerk, whom Fox and Sheridan had called a second Jefferies, as a wise and intrepid judge, who, at a difficult crisis, had discharged his duties with seasonable firmness. Ministers, too, owed their influence as much to the skilful management of the first Lord Melville as to the terror caused by the events which had taken place in Paris. The manliness of his character, and the universal belief that he always had the interests of his country at heart, enabled Lord Melville, during his lifetime, to attach Scotland to that party of whose leaders he was nearly the foremost. But now he had been dead for some years, and a variety of influences were at work which ultimately destroyed the Scottish Tory party. It was from the bar of Scotland that the leaders of the new Liberal movement came. Fifteen years before, the younger men of the Whig party in the Parliament House had started the Edinburgh Review; and the talent by which that journal was distinguished had done much to raise Whig politics in the estimation of the country. In 1809 the Quarterly Review appeared under the auspices of the Dundases, and assisted by the genius of Walter Scott. In 1816 Blackwood's

Magazine began its long and prosperous career. But so vigorous were the Edinburgh Reviewers, that, in spite of the great ability of the Tory writers, the Tory party was losing its hold on the country and all confidence in itself.

The position of parties at the Scottish bar was peculiar. Although for many years patronage had been entirely in the hands of the Tory party, the talent of the bar was on the Whig side. "All the men at the Scotch bar," said an eminent English lawyer, "who are most considerable for learning, talents, and reputation are in opposition to Government."[1] Clerk, who had been Solicitor-General during the Ministry of All the Talents, and who now, after thirty-two years of practice, stood at the top of his profession; Cranstoun, who eight years after was chosen Dean of Faculty amidst the applause of all parties; Cockburn, Lord Melville's nephew, but the sturdiest of all the Whigs; Moncreiff, the greatest lawyer in the Parliament House; and the brilliant Jeffrey; these and other Whigs were the leaders of the bar. For years they had been in opposition, but had never lost heart; and now the hour of triumph was rapidly approaching.

The Lord Advocate who succeeded Colquhoun was Alexander Maconochie, son of Allan Maconochie of Meadowbank, a judge of the Court of Session, and Elizabeth, daughter of Robert Wellwood of Garvock. He was called to the bar on the 2d of March 1799, and was soon appointed an Advocate-Depute. In 1810 he became Sheriff of Haddingtonshire, in 1813 Solicitor-General, and in July 1816 Lord Advocate.

He came into office at a very critical time. The satisfaction which had been felt at the conclusion of peace in the previous year was already forgotten in the general misery which spread over Scotland in the summer of 1816. Every

[1] Memoirs of Romilly, iii. 306.

branch of industry was depressed. Labourers were suffering from the scarcity of work. Tradesmen were being ruined every day by the fall in prices. The weather, too, was inclement. In the middle of May the hills near Edinburgh were white with snow; as the summer went on there were constant rains; and the harvest was a total failure. In England distress had produced political agitation which the Government believed to be dangerous; and in Scotland the same thing was seen. Political associations sprung up on all sides, and formed the subject of anxious correspondence between the authorities in Edinburgh and the Government in London. In the official correspondence of the day the term "Radical" now appears more frequently than before; and in the letters of Lord Advocate Maconochie the words "radical" and "traitor" mean the same thing.

It was one of Lord Sidmouth's maxims, at this time, that it was his duty, as Secretary of State, "to adopt all justifiable means of obtaining information of the plans of the conspirators."[1] One of the "justifiable means" which he employed in England was, as is well known, the indiscriminate use of spies. In Scotland the area of investigation was smaller, and one spy, who himself employed a few subordinates, was able to do all that Government required. This spy, Alexander Richmond by name, had himself suffered from the rigorous policy of the Tory Government. In 1812 the weavers of Glasgow struck for a rise of wages. Some of them were tried for forming a combination, and sentenced to eighteen months' imprisonment. Richmond had been accused of taking part in this strike; and Cockburn and Jeffrey, his counsel, had advised him to submit to outlawry. He had done so, and thus escaped what Lord Cockburn calls the "outrageous sentence" pronounced on his companions. Some months after he reappeared, pleaded guilty,

[1] Life of Lord Sidmouth, iii. 185.

and was sentenced to a short term of imprisonment. When he came out of jail, his counsel, to give him a start in life, procured for him a sum of money and set him up in business as a weaving manufacturer in Glasgow.[1] In 1816 it was suspected that a treasonable or seditious conspiracy was being hatched in the west of Scotland. Mr. Kirkman Finlay was at that time member for the Glasgow district of burghs.[2] He thought that Richmond, who had been introduced to him by Cockburn and Jeffrey in 1812, might be able to procure information with regard to the state of feeling among the working classes. He accordingly sent for him. They met about the 10th of December 1816, and had a long conference, in the course of which Richmond was intrusted with what was called a "State secret." This secret was that a plot against the Government existed in Glasgow, and that Lord Sidmouth would pay, out of the Secret Service money, for information on the subject.[3]

Richmond agreed to act as a spy. He afterwards published an account of his conduct, in which he attempted to show that his real motive was to save his old friends, by finding out what they were doing, and preventing them going too far. But the Lord Advocate and Lord Sidmouth both regarded him as a common informer. He reported in due time that a plot was in existence, and named some of those who, he said, were concerned in it. On this the Lord Advocate wrote to the Secretary of State, proposing to arrest the men named by Richmond on a charge of treason. Lord Sidmouth's answer was as follows:—"I have to acknowledge the receipt of your Lordship's letter of ye 2d inst. The communications of Richmond are become, in all respects,

[1] Cockburn's Memorials.

[2] Previous to the Reform Bill of 1832, Glasgow, Dumbarton, Renfrew, and Rutherglen formed a district returning one member.

[3] Exposure of the Spy System of 1816-1817; Mackenzie's Reminiscences of Glasgow; Cockburn's Memorials.

more important, particularly as they bear stronger marks than heretofore of earnestness and sincerity. Your Lordship, however, will not, I am convinced, recommend or permit the adoption of the measure you mention, unless you are convinced that circumstances are so ripe and favourable as to admit of no reasonable doubt of the full accomplishment of its object. The consequences of success would be most beneficially felt throughout the kingdom; and it would be most unfortunate if the measure were rendered abortive, and possibly injurious, by a premature execution of it. I ought perhaps to offer an apology to your Lordship for what I have thus said, but it cannot, I trust, be necessary for me to assure you of my confidence in your judgment and discretion as well as in your firmness and promptitude."[1]

Richmond continued his inquiries. The weavers, he now said, were taking a secret oath of a dangerous character. Even the troops in the barracks at Glasgow were distrusted, in consequence of what the informer said; and spies were actually sent to Glasgow by the Lord Advocate, with orders to gain the confidence of the men of the Forty-second, or Black Watch, and find out if that famous regiment was disaffected. On hearing of Richmond's reports Lord Sidmouth wrote as follows:—

"The measures which have been adopted to obtain Information respecting the numbers, names, plans, and preparations of the disaffected at Glasgow appear to me as highly judicious. The Oath of Secrecy mentioned in your Lordship's last letter is a Feature in the Combination which bears a very serious Character, and increases the importance of acquiring accurate and minute intelligence of what is going on, and that with the least delay possible. The 3rd of Feby is the Day

[1] Lord Sidmouth to Maconochie, "Secret and Confidential," 7th Jan. 1817, Scot. MSS. Record Office.

on which what is term'd 'a general rising' is intended; it is that to which the Spa-Fields meeting is adjourn'd, and on which meetings of the same description are to be held in some of the manufacturing Towns in Lancashire; it is not therefore probable that the disaffected spirits in Glasgow will remain quiet on that day.

"I have made a Representation in the proper Quarter respecting the state of the Barracks at Glasgow, and I have (reluctantly, I own) given an Intimation at the Horse Guards relative to the two Regiments now quartered in that city. English Troops are not objects of suspicion in any Part of England; and highly as their fidelity deserves to be estimated, it cannot justly be rated more than that of Scotch soldiers, amongst the most eminently distinguish'd of which are those composing the two Regiments now at Glasgow."[1]

Richmond was able to find out many of the secret doings of the "Radical" associations; but he had not himself taken the oath of secrecy. The Lord Advocate wished him to do so. "I have," he wrote to Lord Sidmouth, "again pressed the necessity of urging him to take the oath, and of using every possible means of prevailing upon him to go all lengths."[2] But the spy had scruples, and positively refused, saying he would not take an oath of secrecy, and then reveal what he was told by those to whom he had sworn it. He handed, however, to Mr. Finlay what was said to be a copy of the oath. It was at once transmitted to the Lord Advocate, who, as will be seen, had occasion to use it.

For some time after his appointment Lord Advocate Maconochie had no seat in Parliament; and in a letter to Lord Sidmouth he complained of one of the inconveniences arising from this circumstance. "I have," he wrote, "to take

[1] Lord Sidmouth to Maconochie, "Secret and Confidential," 12th Jan. 1817, Scot. MSS. Record Office.

[2] Lord Advocate to Lord Sidmouth, 15th Jan. 1817, Scot. MSS. Record Office.

the liberty of mentioning to your Lordship that it would be attended with considerable convenience if, by an order from the competent authority, I was enabled to despatch my letters on public business to the parties to whom they are addressed free of expense, as the number of these is at present necessarily considerable, from the situation of the country. Those who have formerly held the office of his Majesty's Advocate of Scotland having been in Parliament prevented any inconvenience being felt from the circumstance I have alluded to. Your Lordship will judge how far it can be remedied."

Although he had no seat, the Lord Advocate was expected to be in London while Parliament was sitting.

"I beg your Lordship to be assured," Lord Sidmouth wrote on the 23d of January, "of the high sense entertained by my self and my colleagues of your Public spirited and disinterested offer to remain in Scotland, under Circumstances which render your presence in London on the 3d of February so peculiarly desirable and important, not on your Lordship's Account only, but on that of the Duke of Buccleuch. I feel it incumbent upon me, however, upon the fullest consideration, to assure your Lordship that your engagement in London appears to me to be one which cannot properly be dispensed with in consequence of any actual or expected exigency in Scotland. Your Lordship, I am sure, will make such Communications and Arrangements previous to your Departure from Edinburgh as will have the effect of rendering your absence from that City as little inconvenient as possible to the public service, and more especially to those confidential and peculiarly important concerns which are now under your Lordships immediate and sole superintendance and direction. The intercourse with Glasgow, and with other parts of Scotland, will, I have no doubt, be intrusted to some person on whose Sagacity, Discretion, and Promptitude the utmost reliance may be placed; and that person should be authorised

and directed to address all his Communications to me at once while you are upon your journey, and through your Lordship when you are in London."[1]

The difficulty as to a seat was soon overcome. A vacancy occurred at Yarmouth, in the Isle of Wight, for which burgh the Lord Advocate was returned, it is said at great expense, on the 18th of February 1817.[2] He entered the House of Commons on the eve of the introduction of those Coercion Bills, without which, it was thought, the Government could not cope with the general discontent which pervaded the country. Parliament had been opened on the 28th of January by the Prince Regent; and as his Royal Highness was driving home, at the back of the garden of Carlton House, his carriage window was broken by a stone or bullet, which had evidently been aimed at him. A similar outrage in 1795 had led to the Coercion Acts which Henry Erskine had, in Scotland, so earnestly opposed. Lord Liverpool now followed the example of Mr. Pitt, and, pointing to the reports of the Secret Committees as additional reasons for severity, proceeded to legislate on the principles of 1795.

The leading measure introduced by Government was a bill to suspend the Habeas Corpus Act. A long debate took place on the 26th of February. In spite of the alarm which rumours of impending revolution had spread throughout the country, the bill was strongly opposed, and party feeling was roused to a high pitch. A violent altercation arose between Lord Castlereagh and a Whig member, who accused Ministers of having "already been guilty of the most criminal cruelties." Lord Althorp, in a few well-chosen words, explained his conscientious objections to the bill. It was evident, after a

[1] Scot. MSS. Record Office.

[2] Parl. Papers, 1878, lxii. ii. 264. Lord Advocate Maconochie sat for Yarmouth till March 1818, when he took the Chiltern Hundreds, and was elected (14th March) for the Anstruther district of burghs (Fifeshire), for which he sat till his promotion to the bench.

short time, that the House was not convinced that it was necessary to suspend the Habeas Corpus Act.

At this point, when the issue of the debate was doubtful, Lord Advocate Maconochie rose to make his maiden speech. When examined before the Secret Committee he had produced a copy of the oath which Richmond had informed him was administered in Glasgow; but he had then stipulated that it should not be mentioned in the Report of the Committee. He had now, however, been requested by the Cabinet to read it to the House. "I am informed," he said, "that a secret conspiracy has been organised in Glasgow, which has communications with societies in England. That conspiracy is held together by means of a secret oath, which I shall read to the House." He then read the oath, which he declared had been taken by hundreds of persons in Glasgow, where the whole population was "so contaminated that if a riot were to commence it would be impossible to foresee what might be its termination."[1] Lord Milton said that the course taken by the Lord Advocate looked "like a *coup de main*," and as if the oath had been kept in the background in order that it might be suddenly brought forward in the debate. But the reading of the oath, especially that part of it in which "physical strength" was mentioned, made a deep impression on the House. The Lord Advocate sat down amidst cries of "Hear!

[1] Hansard, xxxv. 729, 730. The oath was as follows:—"In the awful presence of God, I, A. B., do voluntarily swear that I will persevere in my endeavours to form a brotherhood of affection among Britons of every description, who are considered worthy of confidence; and that I will persevere in my endeavours to obtain for all the people of Great Britain and Ireland, not disqualified by crimes or insanity, the elective franchise at the age of 21, with free and equal representation and annual Parliaments; and that I will support the same to the utmost of my power, either by moral or physical strength as the case may be; and I do further swear that neither hopes, fears, rewards, or punishments, shall induce me to inform or give evidence against any member or members collectively or individually, for any act or expression done or made in or out of this or similar societies, under the punishment of death, to be inflicted on me by any member or members of such society. So help me God and keep me stedfast."

Hear!" from all sides; and, although the debate was long, the bill, when the House rose at half-past two on the following morning, had passed both the first and second readings.[1]

Two days after, when petitions against the suspension of the Habeas Corpus Act were presented, Sir Samuel Romilly called attention to the way in which the bill would affect Scotland. It provided that in England only those who were committed under a warrant signed by a Secretary of State, or six Privy Councillors, were to lose the benefits of the Habeas Corpus Act. But in Scotland persons committed by a Sheriff-Substitute, or any inferior judge, were to lose the benefits of the Act of 1701, which corresponds to the English Habeas Corpus Act. Romilly pointed out this provision of the bill, which he maintained was an injustice to the people of Scotland, and induced the Lord Advocate to accept an amendment which made the warrant of commitment the same in Scotland as in England. This amend ment was popular in Scotland; but the Lord Chancellor was annoyed with the Advocate for yielding.[2]

In the meantime a number of arrests had been made in Scotland; and the Lord Advocate went down to conduct the prosecutions.

The first persons tried were Alexander M'Laren, a weaver, and Thomas Baird, a grocer. M'Laren's offence was having made a violent speech at a meeting near Kilmarnock. Baird was accused of publishing a report of M'Laren's speech.[3] The Crown witnesses only proved that there had

[1] The Opposition mustered ninety-eight votes against the first reading: Ayes, 273; Noes, 98.

[2] Hansard, xxxv. 783-822; Memoirs of Romilly, iii. 278-280. "I hear," says Romilly in his diary of 2d March 1817, "that the Chancellor is extremely angry at the amendments made to the Bill in the Commons, and says that the Act will be useless for Scotland; that the Lord Advocate has not known what he was about; and that it will be impossible for the Lords to agree to the amendments."

[3] State Trials, xxxiii. 1-144.

been some very wild talk. The meeting had been held for the purpose of petitioning Parliament and the Prince Regent in favour of Reform. M'Laren, it was said, while speaking of the Prince Regent as "an august prince, whose gracious nature will incline his ear to listen to the cries of the people," had said that if he turned a deaf ear to the petition, then, "To hell with our allegiance;" and when Baird found fault with this expression, M'Laren had defended himself by saying it was a quotation from Shakespeare! The counsel for the defence showed that language more offensive than any which the prisoners had used was to be found in petitions laid on the table of the House of Commons; but the jury returned a verdict of guilty. The sentence was six months' imprisonment.

This was a good beginning for the Lord Advocate, who wrote as follows to Lord Sidmouth as soon as the result of the trial was known:—"The trial of Baird and M'Laren for sedition came on yesterday, and lasted till after midnight, when the Jury were enclosed, and have agreed upon, as I am this moment privately informed, to return a verdict of guilty, but recommending the prisoners to the mercy of the Court. This, I believe, is in unison with the opinion given by the Lord Justice-Clerk in his Summing up, but which I did not hear, having left the Court as soon as I had charged the Jury in behalf of the Crown. There were very long speeches delivered by Messrs. Clerk and Jeffrey, and the defence was conducted pretty much as a party question. The conviction is, however, a matter of the greatest importance to the tranquillity of this part of the Empire, and will, I trust, put a stop to the circulation of seditious publications under the pretence of recommending Reform. Your Lordship will soon be furnished with a printed account of this and of the following trials, as I have directed the whole to be taken down in shorthand to

[1] Scot. MSS. Record Office.

prevent mutilated and garbled reports reaching the public as in the year 1795. In fact, the precaution seemed to me to be the more necessary as the people of this part of the Country are by no means alive to the danger, and I believe the general feeling is that it has been greatly exaggerated by Government. In the meantime, in order to make your Lordship aware of the case w^ch^ was tried yesterday, I inclose a copy of the indic^t^, and I take the liberty of suggesting that as Lord Grenville expressed a very clear opinion in the Committee as to the public^n^ in question, it w^d^ probably afford him some gratification to be informed of the result of the trial."[1]

The next trial was that of Neil Douglas, "Universalist preacher," who was accused of sedition.[2] He had, in his sermons, compared George the Third of England to Nebuchadnezzar of Babylon, who lost his reason; he had called the first gentleman in Europe an "infatuated devotee of Bacchus;" he had likened him to Belshazzar drinking with his wives and concubines; and had declared that as, like Belshazzar, he had not taken warning from the fate of his father, a similar doom to that which befell the king of Babylon might await him. He had said that seats in the House of Commons were sold like bullocks in the market, and that members of Parliament were thieves and robbers. For these wild ravings he was arraigned before the High Court of Justiciary; but the evidence for the prosecution was so weak that the case collapsed. The Solicitor-General, who appeared for the Crown in the absence of the Lord Advocate, himself asked for a verdict of not proven. Jeffrey, who defended the prisoners, demanded a complete acquittal. The Lord Justice-Clerk[3] did not sum up the evidence, but said he would leave the case to the jury; and the prisoner was found not guilty.

[1] Scot. MSS. Record Office. [2] State Trials, xxxiii. 633-682. [3] Boyle.

The failure of the Crown in this case did not stop the other prosecutions which had been begun; and at the next trial there was a scene which stands by itself in the history of the Court of Justiciary.

Soon after the conviction of M'Laren and Baird the Lord Advocate had an interview with Richmond, whom he then saw for the first time. He felt "thoroughly convinced that a more dangerous man does not exist," and thought he should be sent abroad as soon as possible.[1] But it was necessary that the informer should remain in Scotland till the conclusion of the trials for administering that unlawful oath which he professed to have discovered. The principal trial was that of Andrew M'Kinlay, a Glasgow weaver. This man and some of his companions were arrested on a charge of high treason. Mr. Home Drummond, one of the Depute Advocates, was sent to Glasgow to assist in the preparation of the case. He saw the prisoners, and, as will afterwards appear, was at great pains to procure evidence against M'Kinlay. The prisoners, some of whom were to be tried, and others of whom were to be witnesses, were soon afterwards sent to Edinburgh, where they were confined in the Castle. The officer in command wrote to Lord Sidmouth for instructions as to how he was to treat them, and, in particular, "whether any or what persons" were to have access to them.[2] Lord Sidmouth referred him to the Lord Advocate, who decided that no one should be allowed to see them.

Every effort was made by the Crown lawyers to persuade some of the prisoners to turn King's evidence; and the Lord Advocate informed Lord Sidmouth that he had directed Mr. Home Drummond to see one of them, John Campbell, in his cell and press him to become a witness

[1] Lord Advocate to Lord Sidmouth, 10th April 1817, Scot. MSS. Record Office.

[2] General Hope to Lord Sidmouth, 7th March 1817, Scot. MSS.

for the prosecution. "Mr. Drummond," the Lord Advocate wrote, "is of opinion that if I were to promise to send him abroad in some situation in which he might earn his bread, that he would make important discoveries."[1] But Lord Sidmouth would not allow the witness to be bribed. "It is," he answered, "evidently of great importance to obtain from Campbell all the information which he is capable of affording, but I should not choose to purchase it by any other promise than that of protection."[2]

M'Kinlay had been arrested on a charge of high treason; but this charge was soon abandoned. A combined attack was made by the Whig bar on the Crown counsel, who were defeated time after time on questions of criminal law. At this point the attention of the House of Commons was called to the subject. On the 20th of June 1817 Lord Archibald Hamilton informed the House that in Scotland a prisoner had been served with two indictments, and was about to be served with a third. Mr. Brougham asked whether, if this new indictment failed, the Lord Advocate would try a fourth. Even Mr. Finlay, the Tory member for Glasgow, made a strong personal attack on the Lord Advocate, who, he said, could not draw an indictment, and complained that the legal affairs of the country were intrusted to such hands that it was impossible such things should not frequently occur. The Lord Advocate was not in the House; and the answer of Government was that they could not explain everything that was done four hundred miles away, but that they had perfect confidence in the Lord Advocate.[3]

A week after, on the 27th of June, when a division was about to take place on the Habeas Corpus Bill, at one o'clock in the morning, the Lord Advocate rose and

[1] Lord Advocate to Lord Sidmouth, 22d March 1817, Scot. MSS.
[2] Lord Sidmouth to Lord Advocate, 26th March 1817, *ibid.*
[3] Hansard, xxxvi. 1078-1081.

proceeded to defend himself. He complained, with truth, that he had been attacked behind his back, and that nothing had been said to his face. "He seems to have thought," writes Romilly, "that all other matters, as being of far inferior consideration, ought to have been laid aside the moment it was discovered that he was in the House. Talk no longer about the liberties of the nation, or the preservation of the Constitution, for, behold, the Lord Advocate in his place, and ready to enter upon his defence!"[1]

His defence was that it was not in the power of the Lord Advocate to put a man upon trial as often as he pleased. The public prosecutor, he stated correctly, could only ask the leave of the judges to abandon one indictment and proceed upon another; and, therefore, he maintained, nothing had been done which had not the sanction of the High Court of Justiciary. But at the close of a long sitting it was impossible that the question of the Lord Advocate's conduct could be fully discussed. Sir Samuel Romilly said he did not think important public business should be interfered with for the purpose of bringing a charge against the Lord Advocate. Mr. Brougham declared that if any attempt was made to raise a discussion, the House would not allow it to go on; and the subject dropped.[2]

Meantime the trial of M'Kinlay was approaching. John Campbell, the witness on whom the Crown mainly relied, was still locked up in the Castle of Edinburgh; and no one was permitted to see him except the Crown officials. What passed between him and Mr. Home Drummond cannot now

[1] Memoirs of Romilly, iii. 305; Hansard, xxxvi. 1250-1253. Romilly also says: "The Lord Advocate said he had come all the way from Scotland to answer these imputations. It was certainly the general opinion that he had much better have stayed where he was. He has indeed made a very poor figure both here and in Edinburgh, where he has gone on from one blunder to another in the whole course of his State prosecutions. It appears strange that a man of such limited abilities should have been raised to so important a situation."

[2] Hansard, xxxvi. 1250-1253.

be known with certainty. But there can be no doubt that he was frequently visited by the Advocate-Depute. The witness became restive under the constant questioning to which he was subjected, and at last resolved to give M'Kinlay's friends a hint of what was going on. One day he wrote on a small piece of paper a statement, in general terms, to the effect that an attempt had been made to tamper with him, and threw it out of his window, rolled up in a lump of tobacco, to a friend whom he saw passing.[1] This paper was taken to M'Kinlay's agent, who showed it to his counsel; but as the Lord Advocate had repeatedly refused to allow them access to the witnesses, they were unable to inquire into the matter.

On the 19th of July M'Kinlay was brought to the bar on an indictment charging him with administering an unlawful oath. The Lord Advocate, Solicitor-General Wedderburn, and Advocate-Depute Home Drummond appeared for the prosecution. The prisoner was defended by the leaders on the Whig side of the bar, Clerk, Cranston, Thomas Thomson, Grant, Murray, Moncreiff, Jeffrey, and Cockburn.[2] The witness Campbell was called. Jeffrey rose, and objected to his evidence being taken, on the ground that he was only described in the list of witnesses as "present prisoner in the Castle of Edinburgh," which he maintained was not enough for the information of the prisoner. "What purpose," he said, "did it serve to tell us he was in the Castle of Edinburgh, if he was not to be exhibited to the prisoner? The prosecutor prevented us from identifying the witness. How can we know who the witness is from anything yet told us? He is a man shut up in a sealed casket, to whom we can have no

[1] Cockburn's Memorials. Mackenzie, whose account of this affair differs in some particulars from Lord Cockburn's, professes to give Campbell's words: "They are wanting to bribe me to swear away your life, but I'm true." Reminiscences of Glasgow, 120.

[2] State Trials, xxxiii. 555.

access. He is still an egg in the shell, and is not to come out till the proper process of incubation be gone through by his Majesty's Advocate. The public prosecutor has been hatching this evidence in the Castle of Edinburgh, and it is not yet disclosed. If we go to the Castle, and approach the sentinels to ask admission to the witnesses, they ask, Who goes there? and present their muskets to us. We then go to the more civil fort-major, who tells us to go to the Crown Agent. He refers us to the Lord Advocate. His Lordship declines giving us access. Have I thus any benefit from the intimation of the witness's name in a paper presented a few days before the trial?" A long debate followed, at the conclusion of which the judges repelled the objection and allowed the witness to be examined.[1]

Campbell then entered the witness-box and was sworn. It was, at that time, the custom to ask witnesses three preliminary questions: Do you bear any malice against the prisoner? Has any one given you a reward, or promise of reward, for being a witness? Has any one instructed you what to say? Lord Hermand now began to put these questions to Campbell, who said, in answer to the first, that he had no ill-will to the prisoner. "Has any one given you a reward, or promise of reward, for being a witness?" asked the judge. "Yes, my Lord," was the reply. This answer was not heard, and the third question was put; but the prisoner's counsel requested that he might be questioned again. The question was repeated, and again Campbell answered, "Yes." A murmur of suppressed excitement and curiosity ran through the court-room. All eyes were fixed on the counsel for the Crown. "By whom?" was asked. "By that gentleman," answered Campbell, pointing to the Advocate-Depute. "The audience," says Lord Cockburn,

[1] The judges were Lord Justice-Clerk Boyle, Lords Hermand, Gillies, Pitmilly, and Reston.

"seemed to start at this statement, and were then anxiously silent. The judges frowned on the man as if they would have eaten him on the spot."

The Lord Advocate at once moved that the witness should be examined, and his statement taken down in writing. This was agreed to; but Jeffrey pointed out that, as he had no means of knowing what the man would say, he was unable to question him. It was then arranged that he should tell his own story, and give his reasons for saying he had been tampered with.

His story was, that, after a private examination in Glasgow, the Sheriff had left him alone with the Procurator-Fiscal. The Procurator-Fiscal said, "John, I assure you I have six men who will swear you took that oath, and you are as sure to be hanged as you are in life." As Campbell would say nothing, the Procurator-Fiscal went further, and told him that the Lord Advocate was in Glasgow, and that his Lordship would do something for him if he would give evidence. He was taken to Edinburgh, and confined in the Castle. Here the Advocate-Depute came to him, and said his name was in the list of witnesses against M'Kinlay. Campbell replied that he could not go into the witness-box, as his life would not be safe in Glasgow if he turned King's evidence. Then the Advocate-Depute said he might change his name, and go to some other place. He and Mr. Home Drummond were now alone, and the latter promised to get him a place in the Excise, if he would give evidence. He described other meetings with the Solicitor-General, the Sheriff, and the Advocate-Depute; and declared that, though no reward had yet been given, he understood that he was to receive one for being a witness.

This statement, given on oath and signed by the witness in open Court, made a profound impression on all who heard it. It was felt that, if Campbell's story was true, an extra-

ordinary disclosure had been made of the way in which the case for the prosecution had been prepared. The Court decided that Campbell's evidence could not be received. Some other witnesses were examined; and then the Lord Advocate gave up the case. The jury returned a verdict of not proven.[1]

"When I called upon the Crown lawyers next day," Richmond writes, "to learn the particulars of the trial, they appeared like chagrin and mortification personified. Mr. Drummond attributed their failure to a want of management, in not, in the first instance, making sure of evidence to procure a conviction. On the conversation turning upon the means adopted to break up the organisations formed during the Administration of Mr. Pitt, he, with strong emphasis, remarked, 'Had the case depended upon the late Lord Melville, *he* would not have drawn a trigger until he was sure to kill.'"

The Lord Advocate wrote to the Secretary of State a long letter, the whole of which must be published, in order to give his account of the proceedings.

"I am extremely sorry to have the mortification of acquainting your Lordship that, from the perjuries committed by the *socii criminis*, on whom I was forced to rely for proving the offences committed by the State prisoners from Glasgow, I have been forced to give up the case of M'Kinlay after a very long trial. The confessions of the prisoner himself, and the testimonies of the witnesses, completely establish the existence of the conspiracy and the administration of the oaths; but the only witness who deposed to its having been administered by the prisoner, said that he should have been unable to have stated upon oath the terms of the obligation had he not seen it in the newspapers; and this was sustained by the Court as an objection to his evidence.

[1] State Trials, xxxiii. 275-628.

The jury refused to find a verdict of not guilty, and have returned one of *not proven.*

"Campbell, whose testimony was expected to have been the most decisive, was lost by the following circumstance which I have no doubt will be made the handle for much abuse and misrepresentation of the servants of Government in this country.

"Your Lordship may recollect that I had the honour of mentioning in a private letter, soon after my arrival from town in March, that that person had stipulated for his having permission to go abroad, and the means of conveying himself thither, as the return for his communicating the whole truth respecting the conspiracy at Glasgow, with which, from the premature seizure of the individuals, contrary to my direction, we were then so imperfectly acquainted. The individual stated as his ground for making this a condition, the impossibility of his return to Glasgow should he give evidence, and the danger in which his life must be after his having done so. I informed Mr. Drummond, who acted for the Crown in the communications with Campbell, the propriety of this promise being given, if at all, in the presence of the Sheriff of the County, and that I would mention the matter to the Solicitor-General, who would probably attend the examination of the prisoner, as had been done by the late Lord President Blair, then Solicitor-General, in the year 1795.

"Guaranteeing his personal safety in this manner appeared to me reasonable, and that if he should be taken as a witness it would afford no objection to his testimony. The object *then* in view was, however, to obtain information upon any terms, and even if it had been otherwise I should have thought myself bound to acquiesce in the proposal. The Sheriff accordingly went to the prisoner with the Solicitor-General and Mr. Drummond, who were anxious to have the terms on which Campbell agreed to speak out taken down in writing, and repeated over in his (the

Sheriff's) hearing, that all that could be done was to guarantee his safety, and to secure his being sent abroad if he desired it. But the Sheriff said it was not usual to take such matters down in writing in examinations before him, and he therefore himself destroyed the paper on which the above statement by the Solicitor-General was written. All this I heard nothing of at the time, and knew nothing more of the matter, except that the prisoner had requested that £1 should be sent to his wife, to enable her to travel to Edinburgh, in a letter he had written her. But being afraid of misrepresentations, I refused my consent to this being done, and the letter was returned to Campbell with a statement to that effect. I however ordered the magistrate at Glasgow to pay for a place for the woman in one of the coaches; but, from her being indisposed, she was unable to avail herself of this benefit. On this witness being yesterday put upon oath, and asked the ordinary question, if any promise of reward for giving evidence had been held out to him, *he said there had*, and then he told the above story, mixed up with several falsehoods, and told in such a way as in some measure to excite the unfavourable impression that a promise of sending him abroad *had* been given, and given as the reward of his being a witness. He, however, positively swore that at no time had any attempt been made to instruct him how he was to give his evidence, or what story he was to tell.

"I urged the Court to examine the Sheriff, Sir William Rae, who would have proved the falsehood of part of the statement; but as this would have had the effect of proving Campbell to be unworthy of credit, their Lordships thought it unnecessary, and I withdrew him as a witness.

"In every other respect the trial passed in a satisfactory manner, except as to the final result, and the prisoner, when acquitted, in the most pointed manner returned his thanks to myself for the kindness with which he had been treated in his

confinement, the ready access his friends had received, and the facilities given him to prepare for his defence. The Court, on dismissing him, stated their conviction that the existence of the conspiracy was established.

"From what had passed at this trial, it was in vain to attempt to bring any of the others before the Court, and I have, therefore, resolved to liberate them at once, and this determination I find meets the approbation of some of the Judges, to whom I privately had an opportunity to state it.

"Your Lordship will, I trust, excuse my having employed my Secretary on this occasion, as I am a good deal fatigued. It is impossible for me to describe to your Lordship how much I am mortified by this result of the trials; but I am satisfied that I have done my duty to the best of my ability, that the failure has not been owing to any want of exertion upon my part, and with that feeling I must endeavour to get the better of the disappointment which arises solely from the conviction that a different result would have been beneficial to the country."[1]

Lord Sidmouth at once replied:—

"Your letter received this morning has disappointed the hopes which I had entertained, that, as there could be no doubt of the guilt of M'Kinlay, a verdict of Guilty would have been the result of his trial. Still the proceedings will do good; and, I am confident, that whatever regret, with a view to Public Interests, may be felt on this occasion, no blame can justly attach upon those who had the conduct of the trial; and that such will be the impression on the well-judging part of the Public. I came to Town early this day from Richmond, to which I shall return in time to proceed with three of my children into Berkshire, on our way to Cheltenham. My absence will not be longer than a fortnight."[2]

The trial of M'Kinlay was in July 1817. Early in the

[1] Scot. MSS. 1817, Record Office. [2] *Ibid.*

following year Lord Archibald Hamilton brought the conduct of the Lord Advocate and the Scottish officials under the notice of the House of Commons. He accused them of a system of gross and palpable tampering with the witness, who, the Lord Advocate said at the trial, had been shut up in the Castle in order that he might not be tampered with by the prisoner's friends. He laid the statement of Campbell before the House, and maintained that the Crown lawyers had been guilty of an attempt to procure perjury; "for," he said, "had M'Kinlay been convicted on Campbell's evidence, that evidence must have been obtained by perjury on Campbell's part, in swearing that he had received no promise of reward."[1] He moved that the record of Court be laid before the House.

The Lord Advocate defended the way in which the case had been conducted; and alluded to a statement made by the Attorney-General, who had said, "God forbid that I, or any one officially connected with me, should have any intercourse with a witness in a case of public justice." Such a rule, the Lord Advocate said, could not be applied to Scotland. "The duties of the Attorney-General of England and the Lord Advocate of Scotland were in many respects different. The Lord Advocate was not only the public prosecutor, as the Attorney-General was, but he was likewise a police magistrate. This arose from the circumstance of Scotland being a separate government, without having a resident administration."[2] He explained Campbell's statement by saying that he made it in order to disqualify himself. This explanation was adopted by the Attorney-General, who said that he saw in that statement "the artful story of a cunning and designing man, who knew how to disqualify himself when he did not choose to give evidence." The Attorney-General also complained that, by raising the discussion, Lord Archibald Hamilton was inter-

[1] Hansard, xxxvii. 268-283. [2] *Ibid.* 286.

fering with the administration of justice in Scotland, and expressed a hope that the House would refuse the motion, as a similar motion had been refused in the cases of Muir and Palmer, in 1794. After a long debate the motion was defeated by a large majority.[1]

In the session of 1818 the attention of Parliament was once more called to the question of Burgh Reform in Scotland. In the previous year the magistrates of Montrose had elected themselves by ballot. The election was quashed; and a warrant was issued which altered the constitution of the burgh. Hitherto, as in all Scottish burghs, the magistrates of Montrose had been self-elected. Under the new constitution they were to be elected by the burgesses. The affairs of Aberdeen had been so grossly mismanaged that the debt of the burgh amounted to two hundred and thirty thousand pounds, a sum the interest of which the town was unable to pay.[2] An irregularity having occurred in the election of magistrates, the proceedings were declared void; but Government, instead of doing as had been done in the case of Montrose, permitted the old Councillors to elect their successors. On the 13th of February, Lord Archibald Hamilton moved for a copy of the warrant issued, in the previous year, to the burgesses of Montrose.[3] His speech alarmed Lord Castlereagh, who, while admitting that it was a defect in the Scottish system that the burgesses had no control over their own funds, feared that any inquiry would raise the question of Parliamentary Reform. He therefore opposed the motion. So did the Lord Advocate. "The Scotch," he said, "are not famous for unanimity, as it is always supposed that argument is a favourite amusement

[1] As Lord Cockburn points out, the suspicious part of the proceedings was, that the Crown counsel in Scotland did not venture to prosecute the witness Campbell for perjury in swearing that he had been tampered with.

[2] Edinburgh Annual Register, 1818, Hist. 158.

[3] Hansard, xxxvii. 423-428.

with them;" but he had no doubt that the majority would prefer that the burghs should remain as they were.

Lord Archibald's motion was lost without a division; but, on the 10th of April, the Lord Advocate brought in a bill which provided that the Court of Exchequer should have the power of controlling the expenditure of the burghs, on the complaint of five burgesses.[1] The Whigs, however, wanted more. They wished the people to have a voice in the election of the magistrates. The Lord Advocate's bill was, therefore, considered inadequate. Numerous petitions were presented against it. Instead of removing, it increased the general discontent, and was accordingly withdrawn.

In the following year the Lord Advocate again brought forward a scheme of Burgh Reform. It was similar to the measure proposed by Lord Advocate Dundas in 1792. That measure had been opposed by delegates from fifty-three Scottish burghs, and Lord Advocate Maconochie's bill met the same fate. The second reading was fixed for the 10th of May; but on the following day it was postponed till the 5th of June.[2] Lord Archibald Hamilton, encouraged by the petitions against the Government bill, moved for a Select Committee on the subject. His motion was carried by a majority of five; and the Lord Advocate's bill was allowed to drop.

Parliament rose on the 13th of July. A fortnight before, Lord Advocate Maconochie had resigned office, and taken his seat on the bench, in place of David Douglas, Lord Reston, who had died suddenly on the 23d of April.

He took the title of Lord Meadowbank; but, on the bench, he suffered by comparison with his father. The first Lord Meadowbank had been a man of great ability and various accomplishments. "His knowledge," says Lord Cockburn, "reached every subject—legal, scientific, his-

[1] Hansard, xxxvii. 1291, 1292.

[2] *Ibid.* xxxix. 1433, 1476-1478; Commons' Journals, 14th May 1819.

torical, and literary, and consequently was perhaps more varied than accurate; and under his ceaseless industry, his information increased hourly." According to an old Parliament House story, the second Lord Meadowbank had occasion to ask a well-known member of the bar, who was pleading before him, to explain the distinction between the words "also" and "likewise," which he had used in the course of his argument. "Your Lordship's father," was the reply, "was Lord Meadowbank; your Lordship is Lord Meadowbank *also*, but *not likewise!*" Nevertheless, although not equal to his father, he was a painstaking and conscientious judge.

As Lord Advocate, at the time of M'Kinlay's trial, he was guilty of grave errors in judgment; but it was a period of peculiar difficulty, at which any man might have failed. The attacks made upon him by Sir Samuel Romilly, the unfortunate episode of the witness Campbell, and the joke about "Lord Meadowbank likewise," gave rise to the impression that he was a weak man. But an incident may be mentioned which shows that he was laudably firm in maintaining the dignity of his office. There was a vacancy in the Sheriffship of Argyllshire. He wrote to a member of the bar, intimating his intention to recommend him for the appointment, and at the same time communicated his views on the subject to Lord Liverpool. The Prime Minister, however, informed him that the Duke of Argyll, whom the Government wished to oblige, had recommended a friend of his own, and that the Duke's request was to be granted. But Mr. Maconochie answered that, as Lord Advocate, he had the right of recommending persons to fill Sheriffships, and would resign if the Duke's nominee was appointed. On this Lord Liverpool reconsidered the matter; and the vacancy was filled in accordance with the Lord Advocate's wishes.

Lord Meadowbank retired from the Bench in 1841, and died on the 30th of November 1861.

CHAPTER XIX.

SIR WILLIAM RAE.

LORD JUSTICE-CLERK RAE, better known as Lord Eskgrove, was a conspicuous figure in that quaint group of judges which sat on the bench of the Court of Session at the close of last century. His extraordinary accent, his long-winded orations, his ludicrous appearance, and the absurd things he said and did, are duly chronicled by Lord Cockburn and known to every reader of the Memorials. He was, however, in spite of these eccentricities, one of the best lawyers of his day. This old judge was made a baronet a short time before his death, which took place in October 1804. His eldest son, Sir David, died without male issue, and was succeeded by his brother William, the third and last baronet of the family.

William Rae was called to the bar of Scotland on the 25th of June 1791, and became Sheriff of Midlothian in 1810. He never, at any time of his life, was in full practice; but such was the dearth of talent on his side that, in the summer of 1819, he succeeded Mr. Maconochie as Lord Advocate. He was at the same time returned to Parliament for the Anstruther district of burghs.

After the State trials of 1817, and during the years 1818 and 1819, Scotland was quieter than at any time since the beginning of the century. The agitation for Reform continued; but in Scotland, as in England during the same

period, no signs of open resistance to the law were visible. It appeared as if the Reform movement was to be carried on by proper and constitutional methods. But the purpose of the ruling party was to prevent Reform at all hazards. In August 1819 the Manchester massacre took place; and in the following autumn the Six Acts were passed. The policy of Ministers led to the Cato Street Conspiracy in England, and to the "Radical War" in Scotland.

The new year found the country in a state of alarm and restlessness. Wages were low, bread was dear, work was scarce; and the poor believed that the rich regarded their sufferings with indifference, and that Reform was considered to be the same thing as anarchy:

> "Reform, Reform, the swinish rabble cry,
> Meaning, of course, rebellion, blood, and riot.
> Audacious rascals! You, my Lords, and I
> Know 'tis their duty to be starved in quiet!"[1]

The hands of the Lord Advocate and his Deputes were full. In January the first political case was called in the Court of Justiciary. George Kinloch of Kinloch, a Perthshire laird, had taken the chair at a Reform meeting in Dundee, and had offended the Government by his outspoken words. He was indicted on a charge of sedition, and, having failed to appear for trial, was outlawed. So strong was the feeling against him that the presiding judge said that, in the absence of the Lord Advocate and Solicitor-General, he thought it right to state to the Crown counsel that the Court hoped special care would be taken to secure Mr. Kinloch and bring him to justice. But other trials of greater importance followed; and Mr. Kinloch escaped.

One night, a month after the discovery of the Cato Street Conspiracy, and about a fortnight before the day fixed for the trial of Thistlewood and his associates, a placard was posted

[1] The Man in the Moon, 1820.

up in the streets of Glasgow, Paisley, and other places in the west of Scotland. It was an "Address to the Inhabitants of Great Britain," issued "by order of the Committee of Organisation for forming a Provisional Government," requesting all persons, on and after the 1st of April, to give up work, "and attend wholly to the recovery of their rights, and consider it as the duty of every man not to recommence until he is in possession of those rights which distinguish the freeman from the slave, viz. that of giving consent to the laws by which he is to be governed."[1] Proprietors of public works were recommended to close them until order was restored, and menaces were used against those who opposed the movement.

Lord Advocate Rae took a very calm view of the matter. In a letter to Lord Sidmouth he says, "My own impression is that this will end in nothing;" and he speaks of "the undue alarm which seems to pervade both the magistrates and the military commander in Glasgow."[2] But events soon clearly showed that a foolish attempt would be made to obtain Reform by force of arms. Weavers refused to work. Colliers would not enter the pits. The cotton mills were silent. Artisans who began work in the morning were threatened and forced to stop. Glasgow was crowded with masses of idle men, strolling about, or standing in groups at the corners of the streets. In Paris the causeway would have been taken up, and barricades would have been erected. But in Glasgow the habitual caution of the people, even when discontented and ready to do wrong, prevented a general movement. There were, moreover, many who had ceased work and joined the agitators against their better judgment. Shrewd Scotsmen saw, with dismay, their friends led away by the vain hope of opposing, with undisciplined and ill-armed crowds, the trained and

[1] Edinburgh Annual Register, xiii. Chronicle, 324, 325.
[2] Lord Advocate to Lord Sidmouth, 3d April 1820, Scot. MSS. Record Office.

well-equipped forces of the King. But the ringleaders in the work of mischief-making, some of whom were probably spies in the pay of Government, used all the arts of revolutionary agitation. Cajolery, threats, falsehoods, and violence were employed. Ludicrous promises of the benefits which would follow a rising were freely made. It is believed that in Glasgow and the neighbourhood fully sixty thousand persons struck work. Bands of desperate men skulked about the country, surrounding country houses at night, and demanding arms. Midnight drilling went on. In some villages blacksmiths' shops were entered, and the intruders, forcing the owners to stand aside, set to work to make pikes. It was evident that there would soon be bloodshed.

The authorities were perfectly aware of all that was going on. The country was patrolled by companies of yeomen; and the constables were armed. Matters reached a crisis on Wednesday the 5th of April. That day had been fixed for the rising. All the night before the agitators in Glasgow had been making preparations. But when the sun rose it was found that the law was to be asserted. Five thousand soldiers were drawn up in the streets; and this force was more than enough to crush any attempt at insurrection. During the day the "Radicals," to use the phrase of that time, maintained an attitude of sullen surprise; but in the evening the prospect of coming darkness encouraged them to attempt something. Drums were beat and shots were fired in the outskirts of the city; and as the shades of night fell a crowd of about three hundred men assembled, clutching the pikes and old muskets with which the Constitution was to be destroyed. A troop of cavalry charged them. Eleven prisoners were taken, and the rest ran away.

In the meantime, although it was feared that Glasgow might be the scene of a general rising, the most serious event of the Radical War had taken place in the country district of

Bonnymuir. Early in the morning of the 5th of April a trooper of the Stirlingshire Yeomanry, while trotting along to join his companions at Falkirk, met a party of armed men, who stopped him on the highway. He turned, went to a village where a troop of the Yeomanry was stationed, and told the officer in command what had happened. The soldiers at once started in search of the insurgents, whom they found near Bonnymuir. As the troops approached, the misguided men took up a position behind a wall, and discharged their muskets. A volley, which stretched four of them on the ground, was fired in return; and the yeomen charged through an opening in the wall. After a stout resistance, the insurgents were defeated, and nineteen prisoners were taken.

Lord Advocate Rae was in Glasgow; and on the day following the skirmish at Bonnymuir he wrote to London in the following terms:—"Although we have had abundance of false alarms, all has continued quiet here since I last wrote. I am satisfied that the Radical gentlemen are completely frightened, and that we shall have no opportunity of bestowing upon them any of that description of chastisement which I came here in the hope of seeing inflicted. It now, therefore, remains for us to augment this fear and confirm the confidence of the well-disposed, which has revived wonderfully since our arrival here. Towards this end we propose to-morrow to make a formidable search for arms, and to take many of these into custody with whom pikes or such like arms shall be found. A number of other arrests are taking place on stronger grounds, and we shall have abundance of examples to make in the way of trial. A Commission of Oyer and Terminer for the trial of those accused of High Treason must go out, and ought not to be delayed; but as to this I shall take another opportunity of writing to your Lordship."[1]

[1] Lord Advocate to Lord Sidmouth, 6th April 1820, Scot. MSS. Record Office.

For some days and nights a search was carried on. A number of arrests were made; and a series of prosecutions was arranged. "The only points," the Lord Advocate wrote to Lord Melville, "on which I feel anxious are—first, that no unnecessary delay shall take place in the sitting of this Commission, and that all regard to the sittings of the Court of Session shall be laid aside upon this occasion; secondly, that the trials shall take place in these districts where the crimes have been committed. I believe that this, according to legal form, is the rule; but that there may be no hesitation on the subject, I think it my duty to state that if I am at all to be held responsible for the peace of this part of the kingdom, I must *insist* on these trials being proceeded in, not at Edinburgh, but in places to which I have already referred."[1]

The trials took place in summer, before a Commission of Oyer and Terminer, consisting of Lord President Hope, Justice-Clerk Boyle, Sir Samuel Shepherd, Chief Baron of the Court of Exchequer, Chief Commissioner Adam, and two of the Justiciary judges. They sat, between the 23d of June and the 9th of August, at Stirling, Glasgow, Dumbarton, Paisley, and Ayr.[2] The first sitting was at Stirling, where the prisoners taken at Bonnymuir were to be tried. While the Grand Jury were considering the bills laid before them, Sir William wrote to Mr. Hobhouse:—"Our Commission is just opened.[3] The only thing we have neglected has been to provide a proper short-hand writer to take down the proceedings. There is no fit person of that description in Edinburgh; and in the treason trials in 1794 a short-hand writer was sent from London. This is a matter of considerable consequence in many points of view; and I therefore

[1] Lord Advocate to Lord Melville, 10th April 1820, Scot. MSS. Record Office.

[2] Treason Trials in Scotland, 1820 (3 vols. 1825).

[3] Lord Advocate to Mr. Hobhouse, Court Room, Stirling, 23d June 1820, Scot. MSS. Record Office.

beg that you would send us down, without loss of time, a person duly qualified for the above purpose."

True bills were found against eighteen persons, of whom a weaver, named Andrew Hardie, was tried first. As the charge against the prisoner was high treason, he was not prosecuted at the instance of the Lord Advocate, but on an indictment presented by the Grand Jury of Stirlingshire. The Lord Advocate, the Solicitor-General for Scotland, Mr. Serjeant Hullock, and three Depute Advocates appeared for the Crown. The accused was defended by Francis Jeffrey and Mr. Cullen. An objection was taken to the presence of Serjeant Hullock, on the ground that he was not a member of the Scottish bar; but, after an interesting debate, it was repelled.[1] Jeffrey defended the prisoner with his accustomed ability, but had not the advantage of speaking last, as, the charge being treason, that privilege belonged to the Crown. Hardie was found guilty; and on the following day Baird, another of the prisoners, was also convicted. The remaining sixteen prisoners pleaded guilty, and threw themselves on the mercy of the Crown.

The result of the prosecutions was, that true bills were found against ninety-eight persons, of whom fifty-one were not apprehended. Of the rest, twenty-four were sentenced to death, two were found not guilty, and twenty-one were released because the Lord Advocate abandoned the charges against them. Only three were executed: Wilson, an old man, who was hanged at Glasgow on the 30th of August; and Hardie and Baird, who met the same fate at Stirling on the 8th of September.

The prosecutions were finished at Ayr on the 9th of August. At the close of the last case the Lord Advocate rose, and, in announcing that the labours of the Commission were at an end, stated that he was determined to prosecute

[1] Treason Trials in Scotland, 1820, i. 81-99.

the persons who had absconded, if they ventured to show themselves. "No person," he said, "standing in the situation in which they do, will be allowed to remain in this country without suffering the due punishment of the law. . . . This country will still require to be watched with care and attention. The Government, I trust, will be vigilant, and will look, and I hope not in vain, to the local magistracy, not only in the execution of their legal functions, but in directing the minds of the people to the right path of their duty."[1]

Lord Cockburn says: "To make such a parade about such treason did no good either to the law or to the people. The whole affair was composed of three nearly equal parts—popular discontent, Government exaggeration, and public craze." But Cockburn was in Opposition. The fears of an attack on Edinburgh by fifty thousand armed men were doubtless absurd; but the Government would have been seriously to blame if it had not stamped out a movement which, it cannot be denied, had for its avowed object an appeal to arms, and which, in point of fact, led to a conflict with the King's forces.

Some remarks made by the Lord Advocate during the sittings of the Commission were resented by the Justices of the Peace in Lanarkshire, who thought he had hinted that they neglected their duty. On the 28th of July a meeting was held in Glasgow, at which resolutions were carried condemning the Lord Advocate's statements as "injurious, injudicious, and indecorous." Rae wrote to the chairman, disowning any intention of reflecting on the conduct of the Justices. The Justices sent a memorial on the subject to Lord Sidmouth, who returned a civil answer; and so the affair ended.

The unfortunate men who had taken part in the "Radical

[1] Treason Trials in Scotland, 1820, iii. 490-492.

War" were merely expressing, in a culpable manner, that feeling against Ministers which was gradually spreading all over Scotland. The town councils and the county freeholders still sent up to the House of Commons members who supported Government; but the policy of Lord Liverpool, and especially the way in which the Queen was treated, had roused a spirit of indignant opposition. The last month of 1820 witnessed the spectacle, almost for the first time, of a large political meeting in Edinburgh. In the beginning of December a requisition, signed by a number of leading citizens, was presented to the Lord Provost. It requested him to convene the inhabitants for the purpose of petitioning the King to dismiss his Ministers. The Provost refused; but the Whig leaders resolved to hold a meeting. Everything was done to make it a failure. Personal abuse, invective, and ridicule were hurled at the Whigs. The mask, it was said, had been dropped at last. The Opposition had now nothing to say about the reform of abuses. Office was all they wanted; for they boldly demanded that Ministers should be dismissed. The Parliament House Whigs were described as shouting—

"Oh! the Toga, the dear, delightful Toga!
Charming dress
Of old Dundas,
Solicitor's silk Toga!"

It was at that time illegal to hold a public meeting in the open air; and every church or hall which the Town Council or the Lord Advocate could close was shut against the promoters of the meeting.[1] But the Pantheon, a large building used as a circus, and capable of holding between three and four thousand people, was hired; and it was arranged that the meeting should be held there. Saturday the 16th of December was the appointed day. On the morning of that

[1] Cockburn's Memorials.

day the Tories issued a comic programme of the proceedings, in which the speakers were described as "those who are desirous of being his Majesty's servants," and were named after the characters of "Midsummer Night's Dream." Jeffrey was Puck; Moncreiff was Cobweb; Cockburn was Quince; the veteran Clerk was the Lion. The performance was to conclude with "The Silk Gowns; or, Who shall have them?"

But, in spite of abuse and ridicule, the Pantheon meeting was a great success. Thousands were unable to gain admittance. Twenty-five years before, in that place, James Moncreiff, then a boy of sixteen, had held a candle while Henry Erskine was declaiming against the measures of the Pitt Government. He was now in the chair. The crowd, unused to public meetings, was restless and noisy; but Mr. Moncreiff's strong voice enabled him to gain a hearing when he rose to explain the objects of the meeting. He declared that to him and his friends it would be more agreeable to spend their time in the enjoyment of private and domestic society than in discussing political questions; but, he said, "there are times when it becomes absolutely necessary to sacrifice our private habits, and private feelings, if we would procure for ourselves and our children those blessings of freedom which our fathers have transmitted to us, and, above all things, the blessings of regular government by a King who, through his Ministers, governs by the laws of a well-ordered Constitution." He counselled moderation, decorum, and propriety, and explained that the meeting had been called to implore the King to dismiss the Ministry and reassemble Parliament, in order that measures might be taken to allay the general discontent of the country. Jeffrey, in a long and eloquent speech, moved a number of resolutions against the Government, which were almost unanimously carried.

The supporters of Government did all in their power to

represent the meeting as a failure. "The meeting," said a Ministerial paper, "was an extremely disorderly one, and, on some occasions, the chairman in vain exerted his lungs, and Mr. Jeffrey his pantomimic powers, to restore quiet."[1] Mr. George Cranstoun had signed the requisition to the Lord Provost, but was detained in Court till it was too late to find room in the Pantheon. He was at once accused of having stayed away on purpose:—

"You may smile (*ut mos est*), but no doubt they'll remember,
Both Cockburn, and Jeffrey, and John Peter Grant,
How you shied on the famous sixteenth of December,
And left them alone in their utmost of want.

. . . . . .

Then what mind will be yours, when you strut as of old,
While *their* silks are a rustling, in plain bombazine?
How you'll envy the boobies so blustering and bold,
That observed and obtained all the smiles of the Queen.

. . . . . .

Then scorned by the Radicals, cut by the Whigs,
And subjected, ye gods! to the pity of Tories,
You would find to what market you've carried your pigs,—
With what ease one *faux pas* blights a partisan's glory,—
And shudder to think of this cruel stove-greeting,
'Why signed you the puff, George, yet stayed from the meeting?'"[2]

The chairman's statement, that it was only a sense of duty which brought the speakers from their homes to a public platform, was thus cleverly parodied:—

"From our kind dames averted eyes we turn,
And here, on the arena, spout and burn;
Leave our gay female imps, our chubby boys,
And home—dear home, with all its tricks and toys.
Mourn, infant Whigs—your sires are in the lists—
Mourn, ye sweet rosy oppositionists!
No longer little J——y, in the arms
Of her great parent, rides, and prates, and charms;

[1] Edinburgh Weekly Chronicle, 20th Dec. 1820.
[2] "The Whig Warbler" (1820).

No tiny C—ck—n, pleased to play the groom,
Spurs his immortal father round the room;
No infant F—ll—n to gay papa
Holds up a duply, and lisps out the law.
Such dear delights will never come again—
Mourn, infant Whigs! your sires are public men.
So spake M——ff, and tears began to pour
From iron cheeks that never wept before;
His kerchief forth each tender hosier draws,
And melting tailors blubber'd soft applause."[1]

Nevertheless the meeting had succeeded. Seventeen thousand men, above twenty-one years of age, signed a petition in support of the resolutions; while only seventeen hundred signed one which expressed confidence in the Government.[2] "The influence of all this," says Lord Cockburn, "can scarcely be overstated. Old Edinburgh was no more. A new day dawned on the official seat of Scotch intolerance."

In the session of 1822 an important change was made in the procedure by which juries were chosen to try criminal cases in Scotland. The practice had been to lay before the presiding judge a list of forty names, from which he picked fifteen persons to act as jurors. These were presented, five at a time, to the accused, who was asked if he had any objections to them. But it was necessary to state specific objections. There was not, as in England, a peremptory challenge. In 1821 Mr. Kennedy of Dunure, the Whig member for the Ayr burghs, and son-in-law of Sir Samuel Romilly, brought in a bill by which it was proposed to alter the law.[3] Lord Advocate Rae, however, wrote a letter to the Commissioners of Supply of the various counties of Scotland, in which he suggested that they should petition against the bill.[4] His tactics succeeded; and the bill was lost. But Mr. Kennedy again introduced his bill in the session of 1822. His proposal was that the jurymen should be chosen by ballot,

[1] "Act Second of the Whig Convocation" (1820).
[2] Cockburn's Memorials. [3] Hansard, N.S. iv. 670-681.
[4] Letters on the Affairs of Scotland, 60; Cockburn's Memorials.

instead of being picked by a judge, and that peremptory challenges should be allowed.

He moved the second reading on the 20th of June. "His objections to the existing mode of appointing criminal juries in Scotland were briefly these. In the first place, the Lord Advocate had the power of committing for trial, without the intervention of a Grand Jury. Secondly, in the High Court of Justiciary the selection of petty juries lay almost entirely with the judge. . . . The third objection was that neither prosecutor nor prisoner had the power of challenge except for cause."[1] He quoted several cases to illustrate the evils of the system, and continued, "Such grievances have originated chiefly in the want of a Grand Jury. There is not in Scotland such an institution as a coroner's inquest. All the proceedings of the learned Lord are of his own will and pleasure, in the nature of an *ex officio* information. There certainly is a system of deputation. This is indispensable on the circuits, as the learned Lord cannot be in different places at the same time; but the Advocates-Depute are, in general, young persons, and of short standing at the bar. Add to all this the great and arbitrary power of the Court, which may award punishment at its own discretion. The prosecutor has the right also of deserting the diet, as it is called, or of postponing the trial in some cases; so that a man may be a considerable time in prison, unable to force it on." He concluded by declaring that the object of his measure was "to grant the same security to the people of Scotland in cases affecting their lives and liberty, as is already enjoyed by them in the vindication of their civil rights."[2]

[1] Hansard, N.S. vii. 1200.

[2] The ballot and four peremptory challenges were allowed by the Act of 1815, which established trial by jury in civil cases, 55 Geo. III. cap. 42, sect. 21. Four is still the number of challenges allowed in civil cases; but if there are several pursuers or defenders on each side, each side has four challenges, not each individual pursuer or defender.

The Lord Advocate, supported by Lord Binning, who was in training for the post of "Scottish Manager," opposed the second reading. They declared that the people of Scotland were against the bill; and Sir William Rae had the hardihood to rely on the petitions presented in response to the circular which he had sent to the county meetings in the previous year. Lord Binning went so far as to say that if a judge could not be trusted to select the jury, he could not be trusted to decide the law.[1] The Home Secretary differed from the Lord Advocate, and voted for the second reading, with the view of introducing an amendment in committee, by which the right of selection was left with the judge, while the right of five peremptory challenges was given to the prosecutor and the prisoner. In that form the bill became an Act of Parliament.[2] The third reading was carried by a majority of only five.

In 1824 Mr. Kennedy's bill for appointing criminal juries by ballot passed the Commons. But when it went to the Upper House, Lord Melville opposed it on the ground that he could not agree to some of its details. It was thrown out. But in the following year he brought and carried a measure in which Mr. Kennedy's principles were fully admitted.[3] The power of selecting the jury was taken from the judge, and the ballot was introduced. "This," says Lord Cockburn, "is sometimes called Lord Melville's Act; and he is certainly entitled to the praise due to him who first opposes a good measure, and then adopts it." Thus was taken from the Lord Advocate a weapon which he had wielded for centuries, too often as a means of oppression. The progress in public opinion which enabled the law to be changed made the change less necessary. But, even so late as 1825 there were judges in Scotland who would not have hesitated to

[1] Hansard, N.S. vii. 1209. [2] 3 Geo. IV. cap. 85.
[3] 6 Geo. IV. cap. 22; Hume, ii. 308.

pick a jury for the purpose of obtaining a conviction in a trial for treason or sedition.

In 1822 the members for Scotland found themselves once more engaged with the question of the Burghs; and again the movement for a thorough reform was stubbornly resisted. Lord Archibald Hamilton's Committee on Burgh Reform, appointed in 1819, had proved the existence of many abuses; and he now moved for a Committee of the whole House to consider the subject.[1] He proposed that the magistrates should retire from office either yearly, or at intervals of two or three years, and that the system of self-election should be abolished. The Lord Advocate and the whole Tory party were determined to resist Burgh Reform; and the Advocate announced that he did so because he thought it would lead to Parliamentary Reform.[2] At the same time he promised to introduce a Government bill to remedy abuses in the expenditure of burgh funds. This he thought was the real grievance, and that it was not in any way connected with the mode of electing the magistrates. Lord Archibald Hamilton's motion was rejected; and in a short time the Lord Advocate brought in his bill.

It was found that, in spite of the strong feeling on the subject which he must have known existed in Scotland, he had not touched the question of self-election. This doomed his measure to opposition from the outset. He admitted the necessity for establishing some control over the burgh revenues, and proposed to reinvest the Court of Exchequer with that jurisdiction over burgh expenditure which, as we have already seen, it exercised under an Act of James the Third.[3] His bill provided that legal proceedings might be taken, in the Court of Exchequer, at the instance of burgesses, against corrupt magistrates, who, if convicted, would be liable to a fine of five hundred pounds. The bill, how-

[1] Hansard, N.S. vi. 519. [2] *Ibid.* 542. [3] *Supra*, p. 180.

ever, was thoroughly unpopular. The Lord Advocate, assisted by one of his Deputes, Henry Home Drummond of Blairdrummond, who sat for Stirlingshire, steered it through the Commons, and it became law.[1] But the system of self-election remained; and what had been done, instead of stopping the demand for Burgh Reform, only deepened that distrust of the Tory party which was now becoming the political creed of the great majority of Scotsmen.

Party feeling was now more violent than ever, in consequence of the way in which the Government newspapers attacked their opponents. The Press had gradually become powerful in Scotland. The first newspaper published in that country appeared during the Commonwealth. Half a century passed before much progress was made. At the Union there were only three papers, the Edinburgh Gazette, the Edinburgh Courant, and the Scots Courant.[2] They did not last long; but in the course of the eighteenth century others came into existence: in 1718, the Edinburgh Evening Courant; in 1720, the Caledonian Mercury; in 1746, the Aberdeen Journal;[3] in 1779, the Glasgow Herald; till at the close of the great war, there were probably between thirty and forty newspapers in Scotland. There were political differences among them. The Ayr Advertiser, started in 1803, was a Whig paper. The Kelso Mail, an influential journal in the South, was Tory. The Glasgow Courier was strongly Tory, but was written chiefly in the interests of the slave-trade; while the Glasgow Chronicle, a Whig paper, was mainly devoted to answering the Courier. The Caledonian Mercury was Whig; but the Courant, at that time the leading paper in Scotland, was studiously neutral.[4] So were the Glasgow

[1] 3 Geo. IV. cap. 91. [2] Grant, Newspaper Press, iii. 412 *et seq.*

[3] The first number of this paper appeared two days after Culloden, and contained the first published account of the battle. Grant, iii. 520.

[4] In 1831 advertisement duty was paid by forty-one Scottish papers. One of them (the North British Advertiser) had a circulation of above 306,000 a year. The Courant had a circulation of above 250,000; six papers had a circulation of

Herald and the Aberdeen Journal. But there were no recognised party papers in Scotland at the beginning of the century. When the movement which led to the Reform Bill began, the want of a good Opposition paper was felt; and in 1817 the Scotsman was founded. At first the older Whigs thought it too radical, and did not support it cordially; but it gave useful information of passing events, and was conducted with rare spirit and ability.

The supporters of Government resolved to strengthen the Tory Press; and an organisation was started for the purpose of publishing newspapers to oppose the doctrines which the Scotsman was spreading over the country. In 1820 a Government paper, called the Clydesdale Journal, published in Hamilton by two partners, Borthwick and Alexander, was removed to Glasgow, where it appeared under the name of the Glasgow Sentinel. Its circulation was small, and it was about to be stopped. But the managers of the Ministerial party were anxious to keep it afloat; and in November the Lord Advocate and a number of his friends issued a statement, recommending the paper, which was circulated with great secrecy. For some time previously, this paper, which was thus supported by the leaders of its party, had been used for the purpose of making libellous attacks on members of the other side; and the alarm which the spread of liberal principles had caused found vent, not in argument, but in coarse personal abuse. But the party in power relied mainly on the Beacon, which was to be the great champion of their cause. It appeared in January 1821, and carried on a system of libels of a nature so gross that one Tory member of the bar, who was a subscriber, remonstrated with the editor for the way in which the paper was conducted, and, at last, disgusted with the personalities which it contained, refused either to pay for it or read it.

above 100,000; and ten had a circulation of above 50,000. Parl. Papers, 1831-32, xxxiv. No. 465.

In August 1821 the Beacon contained an attack on Mr. James Stuart of Dunearn, an active Whig. He thrashed Stevenson, the printer, on the street. Soon after, a gross libel on Mr. James Gibson, afterwards Sir James Gibson-Craig, appeared. He went straight to headquarters, and asked the Lord Advocate if he was not a partner in the Beacon.[1] Rae replied by sending him a copy of a deed by which he and a number of his friends had bound themselves as security for the bank account of the paper. In addition to the Lord Advocate, it was found that the bond was signed by Solicitor-General Wedderburn, Mr. Forbes, Sheriff of Perth and afterwards Lord Medwyn, and by Mr. Hope, and Mr. Home Drummond, both Depute-Advocates. The terms of the deed showed that they had control of the paper. This exposure ruined the Beacon. "Our friends," wrote Sir Walter Scott, "went into the thing like fools, and have come out very like cowards."

The Beacon having been destroyed by the virulence of its language, the Glasgow Sentinel took its place. Stuart of Dunearn was savagely attacked. In one copy of the paper he was spoken of as a coward and poltroon; and in another copy there was published a "Whig Song" in which he was called a "fat coward."[2] He brought an action of damages against Borthwick and Alexander, the publishers. Borthwick offered to give up the manuscript of the writings complained of, if the action of damages was abandoned. Stuart agreed to this, and went to Glasgow, where the manuscripts were handed to him, on the 11th of March. He discovered that his assailant was Sir Alexander Boswell of Auchinleck. Sir Alexander would not apologise. The well-known duel took place on the 22d of March; and Boswell was killed. Stuart was tried, in

[1] Cockburn's Memorials.

[2] "Ther's stot-feeder Stuart,
Kent for that fat cow-art," etc.

the Court of Justiciary, on a charge of murder, at the instance of the Lord Advocate. He was defended by the Whig leaders; and, after a trial which excited the deepest interest, the jury returned a verdict of not guilty.[1]

In the meantime the Crown counsel had been persecuting Borthwick. Some time before he gave the manuscripts to Stuart, he and Alexander had dissolved partnership, on condition that Alexander should retain the property on payment of a sum of money to Borthwick. Alexander did not fulfil his part of the bargain. Borthwick thereupon raised an action in the Burgh Court of Glasgow, where a judgment was pronounced, on the 14th of February, which put him in possession of the Sentinel office. He was thus entitled to give the papers to Stuart on the 11th of March. Nevertheless, he was charged with theft, at the instance of his late partner, arrested, and taken before the magistrates of Glasgow, who dismissed the case. He then went to Dundee. There he was arrested on a charge of theft at the instance of the Lord Advocate, and carried in irons to Edinburgh. He asked to be admitted to bail. This was opposed by the Advocate-Depute, and refused. An indictment was served upon him; and his trial was fixed for the 24th of April, at Glasgow Circuit. When that day came, the Crown counsel moved for leave to desert the diet *pro loco et tempore*. This was granted; and the accused was sent back to prison. Under the Statute of 1701, the Scottish Habeas Corpus Act, he could only be detained for forty days more; and when that period had expired he presented an application to the Court of Justiciary, and an order for his liberation was pronounced. Thereupon he was again charged with theft, at the instance of Alexander, with the concurrence of the Lord Advocate. He was kept in custody,

[1] Trial of James Stuart, Esq., younger of Dunearn, before the High Court of Justiciary at Edinburgh, on Monday, June 10, 1822.

it is impossible to doubt, with the object of connecting the alleged theft of the papers with the duel between Sir Alexander Boswell and Stuart. In the indictment against Stuart there was inserted a statement that he had conspired with Borthwick to steal the papers from the Sentinel office; and, during the trial of Stuart on the 10th of June, it was stated, in the hearing of the jury, that Borthwick was to be tried on Monday the 17th. Yet, as soon as Stuart was acquitted, Borthwick was released from custody, and never brought to trial.[1]

The death of Sir Alexander Boswell, and the trial of Stuart, had been discussed by all classes of the people. Party feeling, already heated by the violence of the newly-founded papers, had risen to boiling point. The connection which had been proved to exist between the Lord Advocate and the Tory press could not pass unnoticed. There was much indignation against Rae, and a strong desire to punish him. Borthwick, when released at the termination of Stuart's trial, intended to sue Alexander, his private prosecutor, for damages; but the latter became bankrupt, and it was useless to take proceedings against him. It had been intended to join the Lord Advocate with Alexander as a defender against Borthwick's action; but when the case against Alexander was abandoned, Borthwick's counsel thought that if proceedings were taken against the Lord Advocate as a malicious prosecutor his office would protect him.[2] His conduct was, however, brought under the notice of the House of Commons, and the result of the discussion was awaited with deep interest in Scotland. "It is ab-

[1] "The truth is that Borthwick has been imprisoned as a thief and Stuart tried as a murderer merely because the former gave up papers which the Advocate had an interest, as a libeller, to conceal, and the latter shot the author of the articles by which his Lordship and Co. were accustomed to defame." Cockburn to Kennedy, 17th June 1822; Letters on the Affairs of Scotland, 58.

[2] Letters on the Affairs of Scotland, 54.

solutely infamous—downrightly infamous. I hope that Brougham, even though these be Scotch matters, won't refuse to tear that Advocate to pieces," said Cockburn, who was one of Borthwick's counsel.

On the 25th of June 1822 Mr. Abercromby moved "that a Committee be appointed for the purpose of inquiring into the conduct of the Lord Advocate, and other Law Officers of the Crown in Scotland, with relation to the Public Press, and more especially to inquire into the prosecution carried on against W. M. Borthwick."[1] He began by stating that the Lord Advocate and his colleagues had connected themselves with the press in a way which was incompatible with the duties of their situation, and had connived at a system of traducing the public and private character of their opponents. He then went on to comment on the powers of the Advocate. "First, with respect to the powers of the Lord Advocate. For the Lord Advocate have been claimed all the powers which were long exercised by the Privy Council of Scotland. Before the Union, the Lord Justice-Clerk, the Lord Chamberlain, and a few other official personages, constituted the executive power of Scotland, and what remained of their power is claimed to belong to the office of Lord Advocate. That these powers are great is admitted; and, in 1804, they were boldly claimed by the then Lord Advocate. Neither I, nor any one else, know their extent; and this renders them the more dangerous, because nothing can be more dangerous than the existence of a power which is not defined. I do not mean to say that the learned Lord would exercise all the powers which were once claimed by the Privy Council—one of which was, that their authority superseded that of every court of criminal judicature in the kingdom, and that they might bring all parties before

[1] Hansard, N.S. vii. 1324.

themselves for trial. This is a power which I am satisfied the learned Lord would not attempt to exercise if he could. But from the existence of this power, which was claimed and exercised by the Privy Council, one must infer that there are many minor powers claimed, which are not less oppressive in their nature. If the power of the Lord Advocate is to be limited only by that which the Privy Council exercised, there is no act of injustice, violence, and outrage for which it may not be cited as authority; but, without inquiring whether it extends so far, I will come to what are the powers which it is admitted do belong to the learned Lord. He is officially the sole public prosecutor in Scotland. It is true that a private individual may institute a prosecution by consent and concurrence of the Lord Advocate; but then there are so many obstacles in this way of proceeding, as to throw the whole power of prosecution into the hands of the Lord Advocate himself. It is also to be recollected that in his official proceedings the Lord Advocate is not controlled by a Grand Jury." He next explained that no private prosecutor could appear in Scotland unless he could show some personal injury. "The consequence is that very few private prosecutions are carried on in Scotland, and nearly the whole are thus thrown into the power of the Lord Advocate. Now this immense power is exercised by the Lord Advocate, and Solicitor-General of Scotland, and officers who are called Advocates-Depute. These are appointed by the Lord Advocate. There are generally two or three appointed for a circuit; but the learned Lord may multiply himself as many times as he pleases, and appoint an indefinite number in the country." He asked whether the possession of so much power ought not to be looked upon with caution, and said he did not charge the Lord Advocate with any crime of omission; he charged him with a crime of com-

mission. "The learned Lord has at his disposal considerable patronage; he has at his command large sums of money; he has also in his power all the sanction of office; and, sorry am I to say, that all these advantages the learned Lord has given away in order to promote a system of gross libel and atrocious calumny upon private individuals. Now, the House will feel that this is an important consideration, when I inform it that the learned Lord, in addition to all his powers as public prosecutor, is in Scotland a co-existent Secretary of State for the Home Department, and is in constant correspondence with the Secretary of State in England. Everybody will therefore see how much those may gain by his recommendations, who have the good fortune to be in constant communication with him. In every country the bar attracts to itself much of the talent and industry of the community. This is particularly the case in Scotland. As there is no parliament in that country, the bar is the arena which those whose talents have been improved by education select for the display of their mental powers and qualifications. The number of persons practising at the bar in Scotland varies from 150 to 200; and upon these individuals the learned Lord has at least 80 places to bestow. Now it is evident that this patronage gives the Lord Advocate great influence; and, if he employs it properly, it may do much for men of talent and knowledge, and encourage them in their exertions to improve and benefit society; but if he gives it an improper direction, he is inflicting a heavy curse upon his country. Indeed, if he turns it to supporting in the press a system of detraction and calumny, there is no greater misfortune that he can heap upon Scotland, or heavier reproach that he can fix upon himself." Having stated the facts relating to the Beacon, the Glasgow Sentinel, the trial of Stuart, and the proceedings against Borthwick, he said he would

put the case of Borthwick to the sense and feeling of the House. "This was a charge proved to be utterly false; and after all these proceedings, when the day of trial came, the learned Lord refused to go on. But it appears that the Lord Advocate was so trammelled in his situation that he was obliged to refuse his concourse! Good God! is the Lord Advocate all-powerful in everything but in standing between oppression and the oppressed? Is he only to be the instrument of, not the defence against, persecution? I conjure the House to recollect that all these proceedings took place in a country where there is no Grand Jury—where the learned Lord originates all prosecutions on his own responsibility. I beg leave to ask the learned Lord one question. If he thought Borthwick innocent at Glasgow, and he did not choose to proceed against him, why did he not discharge him? If he thought him still guilty, why did he allow Mr. Alexander to interpose? The answer speaks plainly for itself. The learned Lord knew that there was no foundation for the charge, and that it arose out of nothing but the spirit of persecution." He ended a very long speech by stating that in all the proceedings with regard to organising the Government papers in Scotland, the Crown counsel had been the prime movers, and that they were responsible for the system of violent language and personal attack which had been carried on. Nor had their influence affected Edinburgh and Glasgow merely. "So extensive and powerful has been the effect of the example, that, from Inverness to Dumfries, newspapers have been established more or less upon the plan promoted by the learned Lord; and I regret to add, that in some instances clergymen are concerned in them, though, generally speaking, they are supported by borough magistrates, and by persons holding inferior situations in the law, and who look up to the learned Lord in his double capacity of Secretary of State

for Scotland, and Lord Advocate, for recommendation and patronage."[1]

The Lord Advocate at once rose to answer the attack which had been made upon him. He denied all knowledge of the Glasgow Sentinel, and said he never signed any circular recommending it. When the Advocate said this, Mr. Abercromby handed a paper across the table. Rae looked at it, and then said he had made a mistake, but that he did not remember signing the circular. The state of the press in Scotland was, he said, loudly complained of, and the following was his explanation of his own connection with it. "In 1820, various trials had taken place for seditious and libellous publications, and insurrections had actually broken out in several districts. Subsequently to that period, the press of Scotland promulgated the most licentious opinions, and every effort was resorted to for the purpose of stirring up and inflaming the minds of the people. There was not a county in Scotland from which complaints did not arrive, describing the ill effects that were produced by the manner in which the press was conducted. Things were in this situation, when an individual recommended him to give his support to the Clydesdale Journal, which, he observed, had already received the support of many other persons. He, perceiving that the great object of the press in Scotland was to make the people unhappy and dissatisfied with their condition, did promise to recommend the paper in question amongst those who were exposed to the operation of the licentious press. But his support did not extend, and was not meant to extend, to any improper articles that might appear in the paper; neither did he advance any money towards upholding it."[2]

Although he denied all knowledge of the libels which had appeared in the Sentinel, he admitted, amidst the ironical cheers of the Opposition, that he subscribed a hundred

[1] Hansard, N.S. vii. 1324-1348. [2] *Ibid.* 1351.

pounds to the Beacon, and signed a bond which was given to the bank on its behalf. As to the articles which had been published in the paper, he refused to admit any responsibility. In reference to the proceedings against Borthwick, he merely said that one of his Deputes had been informed that a theft had been committed, and had acted properly in all that he had done. It was felt that his explanation was very weak; but, with great fairness and courage, he took upon himself the whole responsibility. "As to the proceedings which have taken place, the Government of the country had no knowledge of any one step that was adopted. Neither his Majesty's Ministers who are now around me, nor any one who was privy to those publications, were acquainted with them. Therefore, if there were any error, it rests on the individual who now addresses you. That individual has stated what he has done; he has declared his motives; and if he has done wrong, it is most proper and fitting that the Commons of England should condemn his conduct, either by a judgment of censure, or by such other mark of displeasure as the case seems to require; and the consequence of which must be to remove him from his present situation. But if, on the other hand, I have done nothing but what the circumstances called for, I hope for a contrary verdict. Still, in whatever way the case is decided, I will bow to it with perfect submission, and without complaint. If it pleases Parliament by their vote to remove me from my situation, I shall console myself with the reflection that many gentlemen can be selected for the office much better qualified to perform its duties than I am. But this I will say, that no man can be found who will endeavour to act more fairly, or to conduct the business attached to my situation with greater moderation and impartiality than I have uniformly done."[1]

[1] Hansard, vii. N.S. 1357, 1358.

With these words he sat down. The debate was continued by Sir James Mackintosh, who quoted Lord Advocate Hope's theory that the Advocate was now the Privy Council of Scotland, and wielded all the powers of all the Officers of State. On a division the motion was lost by a majority of twenty-five.[1]

Two of Sir William Rae's Deputes were Mr. John Hope, afterwards Solicitor-General for Scotland, and a Mr. Menzies. During the discussions on the Lord Advocate's conduct they addressed letters to Mr. Abercromby of such a description that he immediately started for Scotland in order to challenge them. To prevent a duel a warrant for the arrest of Abercromby and the two Deputes was issued on the application of the Lord Advocate. A sheriff's officer proceeded to search for them. Mr. Menzies was found at a dinner-party, arrested, and led before the Justice-Clerk, who bound him over to keep the peace. Mr. Hope, who was not discovered until a late hour, was taken at eight o'clock next morning to the Justice-Clerk, and also bound over. Mr. Abercromby could not be found, though every tavern in Edinburgh was searched.[2]

While the sheriff's officer was looking for Abercromby in Edinburgh, the House of Commons was voting that the letters written to him were a breach of privilege. He was enjoined not to prosecute any quarrel arising out of the matter; and Mr. Hope and Mr. Menzies were summoned to the bar of the House. On the 17th of July the Depute-Advocates appeared, made an apology for what they had done, and were dismissed.[3]

In the following year Mr. Abercromby returned to the subject of the Lord Advocate's conduct to Borthwick, and moved that it had been "unjust and oppressive." Rae took the whole responsibility for the proceedings, and said that if

[1] Ayes, 95; Noes, 120. Hansard, N.S. vii. 1372.
[2] Scot. MSS. Record Office, July 1822.
[3] Hansard, N.S. vii. 1634 1638-1692; Letters on the Affairs of Scotland, 63.

the same circumstances were to occur again he would act in the same way. The opinion of the House is shown by the fact that the Lord Advocate only escaped a vote of censure by the narrow majority of six.[1]

The duel between Boswell and Stuart, the proceedings against Borthwick, and the accusations brought against Sir William Rae, called the attention of Government to the powers of the Lord Advocate; and Sir Robert Peel requested the opinion of the Scottish judges on the subject, with the view of discovering whether they thought any change should be made. They are supposed to have been against any change.[2] But the questions raised by Sir Robert Peel were discussed by the press in Scotland. In this discussion the Edinburgh Review took the lead in a series of articles, most, if not all, of which were supplied by the active brain and willing hands of Cockburn.[3] In these articles there was expressed the feeling of profound dissatisfaction which had been produced by the recent mismanagement of the criminal department. The great grievance was the mode in which juries were chosen. This grievance, as we have already seen, was soon removed.[4] But the blunders of Lord Advocate Maconochie and Sir William Rae had caused a want of confidence in the office of Lord Advocate, and had raised wider questions than that of the jury laws. It was complained that the Lord Advocate's "mixture of general political superintendence with undefined legal rights makes it difficult to say what privileges he has not, or at least will not be held to have, whenever a particular case occurs in which it is necessary to answer a complaint by reference to the nature of his situation."[5]

This idea of a vague, undefined power which might enable

[1] Ayes, 96; Noes, 102; Hansard, N.S. ix. 664-690.

[2] Cockburn's Memorials.

[3] Edinburgh Review, xxxvi. 174; xxxviii. 226; xxxix. 363; xli. 450. The period over which these articles extend is from October 1821 to January 1825.

[4] *Supra*, p. 269.

[5] Edinburgh Review, xxxix. 371.

its possessor to commit a wrong, but which, from the mystery which surrounded it, would screen him from punishment, led to a demand, not for the abolition of the office, but for a definition and limitation of its functions. Several objections to the position of the Lord Advocate were stated by the great Whig journal. It opposed the extensive powers which were claimed for his office. "It has been said advisedly, and on the most solemn occasions, that the Lord Advocate is the Privy Council of Scotland, the Grand Jury of Scotland, the Commander-in-Chief of the forces of Scotland, the guardian of the whole police of the country, and that, in the absence of higher orders, the general management of the business of Government is devolved upon him." The absolute accuracy of such a statement was doubted; but, on the whole, it was thought to be no exaggeration. In ordinary criminal prosecutions, it was admitted, the Lord Advocate had no interest to be partial or oppressive. But in political cases it was otherwise; and the proposal of the Review was "that the Lord Advocate should be empowered to act as a political character in an infinitely less degree than he now is."[1]

There was, it was said, some reason for making him "agent for administration" when the kingdoms were newly united, owing to the ignorance of Scotland in the highest quarters; but now he should be kept clear of "party contact," which was such a source of unfairness.

The patronage at his command was said to give him greater power than the public prosecutor should possess. There were twenty judges in the Courts of Session, Justiciary, Exchequer, Admiralty, Commissary, and Jury Court; and, in all, there were about seventy-eight different offices in the appointments to which he had a voice. The total emoluments of these offices were said to be nearly ninety thousand pounds a year. All this patronage, with

[1] Edinburgh Review, xxxix. 376.

the political influence which it implied, ought not to be in the hands of the Public Prosecutor. "We are aware," said the Review, "that it has been stated that if the Lord Advocate does not take the general charge of Scotch affairs, there must be a regular Secretary of State for Scotland, and that this would be infinitely worse than what we have. We believe that it would. But there are two answers to this suggestion. In the first place, there is no necessity for such a Secretary. There is no more need of a separate Secretary for Scotland, than for Yorkshire, Northumberland, or Wales. Everything that Scotland requires to be done can easily be accomplished by the general Secretary for the whole kingdom, and by the other establishments with which the country is now quite familiar. . . . In the second place, if we must have a separate Secretary, we are very clear that, let it be given to whom it may, this office ought never to be united with that of Public Prosecutor."

The first point, then, contended for was that the Lord Advocate should be relieved of his political duties, and that these should be left to the Home Secretary. In the next place, proposals were made for protecting accused persons against acts of oppression by the Advocate as Public Prosecutor. This, it was suggested, might be accomplished by shortening the legal term of imprisonment before trial, by altering the mode of choosing juries, by taking from the judges the power of declaring acts to be criminal for which persons had not hitherto been tried, by providing an appeal from the decisions of the Court of Justiciary, and by introducing into Scotland, in some form, the system of Grand Juries. These proposals were made in 1824. The writer lived to modify his views. "This article," he says at a later period of his life, "was written at a period when the Lord Advocate had certainly abused his office, and when the Court was less disposed than it ought

to be to obstruct him in that abuse; and therefore it exhibits an exaggerated view of our criminal system, and one which, though perfectly just in the circumstances, is not fairly applicable to it when the public officers are honestly doing their duty."[1]

The Edinburgh Review was answered by several pamphlets, and by at least one article in Blackwood. But the controversy led to nothing. All Whigs were agreed that the powers of the Lord Advocate should be curtailed; and some thought that Grand Juries should be introduced into Scotland. All Tories maintained that no change should be made. The passing of the Jury Act in 1825 removed one grievance; and the question was forgotten in the great political struggles which preceded the Reform Act.

For at least fifty years there had been complaints of the scandalous delays in the Court of Session. Time and money were wasted; and the number of appeals which were presented to the House of Lords proved that litigants had lost confidence in the Scottish judges. In 1785 a bill, brought in for the purpose of reducing the number of judges and raising their salaries, was abandoned in consequence of the violent opposition of the people of Scotland.[2] In 1808 a Commission was appointed to inquire into the administration of justice in Scotland; and, at the same time, the Court, which had hitherto sat as one chamber, was divided into two, the "First Division," consisting of the Lord President and seven ordinary judges, and the "Second Division," consisting of the Lord Justice-Clerk and six ordinary judges.[3] In 1815 trial by jury in civil cases was introduced into Scotland.[4]

In 1824 the question of judicial reform was again brought before the House of Commons. The Commissioners appointed in 1808 had presented voluminous reports, in the production

[1] Cockburn's Journals, i. 76.
[2] *Supra*, pp. 175, 176.
[3] 48 Geo. III. cap. 151; *supra*, p. 227.
[4] 55 Geo. III. cap. 42; *supra*, p. 228

of which a large sum of money had been expended. There was a strong feeling in the Commons that something should be done; and, on the 30th of March 1824, Lord Archibald Hamilton moved that the reports be remitted to a committee of the whole House. The Lord Advocate opposed this motion, and it was defeated; but, later in the session, the Home Secretary brought in a bill founded upon the report of a Commission which had been appointed under an Act of the previous year. It was supposed that Ministers would carry this measure before Parliament rose; but a storm burst forth in Scotland. The Faculty of Advocates, the Society of Writers to the Signet, the Solicitors, and other public bodies were convened; and every post to London carried petitions against the bill.

Lord Advocate Rae was strongly of opinion that the people of Scotland ought to have full time to consider the bill, which he advised the Government to withdraw in the meantime. His advice was taken; and, on the 17th of June it was announced that the bill would be abandoned for a time, in order to give members from Scotland time to consult their constituents. But the intention of legislating was not given up; and in the following session the Judicature Act, well known to Scottish lawyers, was passed.[1]

In 1827 the second Lord Melville resigned office. After the death of "Old Harry Dundas," his successor in the peerage had also filled his place in the management of Scottish business. But this arrangement now came to an end. During the closing years of Lord Liverpool's Government, in which Lord Melville had been at the Admiralty, the differences of opinion which had from the first divided the Cabinet became more marked. The Ministry was divided on the question of Catholic Emancipation. The Tories disliked the foreign policy of Mr. Canning, because he

[1] 6 Geo. IV. cap. 120.

was in favour of the Greeks; they dreaded the domestic policy of Mr. Huskisson, because he was in favour of Free Trade. Matters were brought to a head by the illness of Lord Liverpool. At the crisis caused by this event, Mr. Canning was requested to form an Administration. Peel resigned. His resignation was followed by the resignations of Eldon and Wellington. On this, Lord Westmoreland, Lord Bathurst, and Lord Melville retired. Mr. Canning, left almost alone, turned for help to the Whigs, and succeeded in forming a Ministry.

These events, involving as they did the retirement of Lord Melville, not only from the Admiralty but also from the management of Scottish business, were eagerly watched in Scotland.[1] Lord Advocate Rae continued in office. Solicitor-General Hope did the same, but schemed to oust Rae, and hand the government of Scotland over to Lord Binning. For it was felt that the days of the Dundases were at last numbered. "The citizens of Edinburgh," says Cockburn, "contemplating the extinction of the word Melville, and the prospect of some Whig influence, are in ecstasies." In another letter, to Kennedy, he exclaims, "Above all, save us from a continuance of the horrid system of being ruled by a native jobbing Scot." Some Scottish members, led by Mr. Abercomby and Mr. Kennedy, took the matter in hand. Their object was to stop the system of "Scottish Managers," and induce the Government to return to the Constitutional practice, under which Scotland was ruled by the Ministry, or some member of it, with the advice of the Lord Advocate. Above all, Lord Binning was to be avoided. "If we be really handed over to a Binning, I shall consider it all over with Scotland. I was on a hill planting ivy when I got your letter. After due curses, I resumed my task, but at every spadeful hit

[1] "The Ministerial changes have created a great sensation amongst us." Chalmers to Kennedy, 19th April 1827: Letters on the Affairs of Scotland, 152.

hard, and wished the clods were certain heads."[1] Mr. Canning had, in point of fact, intended to appoint a Scottish Manager, and that Manager was to have been Lord Binning. But Mr. Abercromby "opened his mind fully to Canning on the state of Scotland;" and Mr. Kennedy told Lord Carlisle "that his being able to support the new Government depended on no such arrangement being made."[2] The effect of these representations was, that the arrangement as to Lord Binning was cancelled before Mr. Canning had taken his seat as Prime Minister. These events took place in April and May 1827. In July Lord Lansdowne became Home Secretary, and conducted the business of Scotland in accordance with the advice of Lord Minto, Mr. Abercromby, and Mr. Kennedy.

The prosecution of James Stuart of Dunearn for the murder of Sir Alexander Boswell caused great excitement. But the most important criminal cause which Lord Advocate Rae conducted was the celebrated trial of William Burke and Helen M'Dougal for the murder of Margery Docherty.

Burke, an Irishman from the county of Tyrone, and the woman M'Dougal, had cohabited as man and wife for some years. In 1827 they were in Edinburgh, lodging with William Hare, an Irishman, in a part of Edinburgh known as the West Port. In December of that year, one of Hare's lodgers, a drunken pensioner, died a natural death, and his body was sold by Burke and Hare to the doctors for dissection. Soon after this their neighbours noticed that the men were spending a good deal of money, although they had ceased to work; and it was suspected that they were following the lucrative trade of "Resurrection Men." They had, however, laid their heads together and planned a series of

[1] Cockburn to Kennedy, 4th May 1827.

[2] Memorials; Letters on the Affairs of Scotland, 159.

cold-blooded murders. Their mode of proceeding was to entice into their house persons whom they plied with whisky and then suffocated. The dead bodies were put in sacks or boxes, carried off, and sold to a Dr. Knox, who, with culpable negligence, made no inquiries as to the manner in which the subjects were obtained. From December 1827 till October 1828 at least sixteen murders were committed. The murderers and the women, their accomplices, with whom they lived, were usually drunk. Their dissipated habits, and the ease with which they found a market for their victims, made them reckless; and at length they were discovered and brought to justice.

The last murder was that of a beggar woman, named Docherty. On the morning of the 31st of October 1828 Burke met this woman by chance in a grocer's shop. He spoke to her, and found by her accent that she was Irish. She told him her name was Docherty; and he at once pretended that his mother's name was the same. Professing friendship, he invited her to his house, gave her breakfast, and said she might remain for that day and night.[1] Having thus secured his victim he went to Hare, and arranged that she should be murdered in the course of the evening.

Lodging in Burke's house were a married couple named Gray; and in order to leave the coast clear for the intended crime, Burke told them that they must go, for that night, to other lodgings which he had taken for them, and for which he would pay. However, before leaving Burke's house Gray and his wife saw the woman Docherty, and were informed by the murderer that she came from his own part of Ireland.

Next morning the Grays returned; but Docherty was no longer there. They asked what had become of her, and were

[1] Burke and M'Dougal did not now live in Hare's lodgings, but had a house of their own, where they received lodgers.

informed that she had been turned out of the house for misconduct. In the course of the day Mrs. Gray found the dead body of the woman lying, stark naked, under the bed, among some straw. Information was given to the police, and Burke, M'Dougal, Hare, and Mrs. Hare were arrested.

A searching investigation followed; and it was discovered that, beyond doubt, a system of wholesale murder had been carried on. But the legal evidence was not complete; and the Crown counsel feared that it would be impossible to obtain a conviction. Hare, however, and his wife offered to become informers and give evidence. Their offer was accepted, and the other two prisoners were indicted for murder. Burke was charged with the murder of three persons,—a woman of the town named Paterson, an idiot known as Daft Jamie, and the beggar Docherty. M'Dougal was indicted for the murder of Docherty alone.

The trial took place on the 24th of December 1828. Sir William Rae conducted the prosecution; and one of the Depute-Advocates who assisted him was Archibald Alison, afterwards author of the "History of Europe."

For the defence a formidable array of counsel appeared. From time immemorial poor prisoners in Scotland have been defended by "Poor's Counsel," appointed by the Faculty of Advocates, who act gratuitously. These are generally young men of little experience. But in cases of murder the Dean of Faculty is expected to be ready, if requested, to appear for the accused. The Dean at this time was Sir James Moncreiff, the best lawyer in Scotland. He defended Burke; and his juniors were Patrick Robertson, who ultimately obtained a seat on the bench; Duncan M'Neill, afterwards Lord Colonsay; and Mr. David Milne, now Mr. Milne Home. Three of the advocates who appeared for the woman M'Dougal are as well known: Henry Cockburn, author

of the Life of Jeffrey and the interesting Memorials of His Time, who had no equal in the art of addressing a Scottish jury; Mark Napier, the able biographer of Montrose and Dundee; and George Patton, Lord Advocate and Justice-Clerk during the present reign.

The counsel for Burke objected to the indictment on the ground that it charged the prisoner with three different murders, committed at different times and in different places. The counsel for M'Dougal urged that she ought not to be called upon to plead; because "she is placed in an indictment along with a different person, who is accused of other two murders, each of them committed at a different time and at a different place, it not being alleged that she had any connection with either of these crimes." The judges held that the indictment was correct in point of form, but that, in the circumstances of the case, the charges ought to be taken separately; and the Lord Advocate decided to proceed first with the charge of murdering Docherty, which applied to both prisoners.

The evidence, if Hare was believed, was conclusive. In addressing the jury, the Lord Advocate expressed his repugnance to making use of the informer. "It is naturally revolting," he said, "to see such criminals escape even the punishment of human laws; but this must be borne, in order to avoid greater evils; and it may form some consolation to reflect, that such an example of treachery, by a *socius criminis*, must tend to excite universal distrust among men concerned in similar crimes, if any such should hereafter exist. Fortunately for the safety of life, a crime of this nature cannot, in all its details, be accomplished without assistance, and nothing can be more calculated to deter men from its commission than the probability of the perpetrators readily betraying each other."

Dean of Faculty Moncreiff made a speech of extraordinary

ability, in which he refused to defend the character of Burke. "I have," he said to the jury, "too much respect for your understanding and my own profession to do so." His argument was that, so far as the independent evidence went, the murder *might* have been committed by Hare, "that cold-blooded, acknowledged villain," and that Burke could not be safely condemned on evidence which was inconclusive, if the informer's testimony was rejected. Mr. Cockburn discharged the duty of defending M'Dougal with his accustomed tact. "What she is endangered by," he said, "is the cry of the public for a victim. I need scarcely remind you that this is a cry to which you, who are set apart from the prejudices of the public, and are sworn to look to the legal evidence alone, must be completely deaf. Let the public rage as it pleases. It is the duty, and the glory, of juries, always to hold the balance the more steadily, the more that the storm of prejudice is up. The time will come when these prejudices will die away. In that hour, you will have to recollect whether you this day yielded to them or not;—a question which you cannot answer to the satisfaction of your own minds, unless you can then recall, or at least are certain that you now feel, legal grounds for convicting this woman, after deducting all the evidence of the Hares, and all your extrajudicial impressions. If you have such evidence,—convict her. If you have not,—your safest course is to find the libel is not proven."

These speeches, and the judge's charge, which followed, were delivered at the close of a long trial; and it was at half-past eight in the morning that the jury, exhausted by a sitting of twenty-two hours, retired to consider their verdict. In fifty minutes they returned, and announced that they found Burke guilty, and the charge against M'Dougal not proven. M'Dougal was released. Burke, who was at once sentenced to death, died a few weeks after-

wards on the scaffold with the curses of the crowd ringing in his ears.[1]

William Hare, the principal witness against Burke, had turned informer on a promise of safety given to him by the Lord Advocate; but so horrible were the revelations which he had made that, after the trial and conviction of Burke, he and his wife were detained in prison, with the view of finding a fresh charge on which they might be tried. None was found. It was rumoured they were about to be released; and the public were enraged at the idea of Hare escaping in this way. The Press called on the Lord Advocate to redeem a pledge which he had given, that he would probe the matter to the bottom.[2] So strong did the indignation against Hare become that money was subscribed to enable the mother of one of the victims, Daft Jamie, to prosecute Hare with concurrence of the Lord Advocate. Nor was it only a desire for vengeance that led to this. It was thought

[1] The execution took place on the 28th of January 1829. "Professor Monro, in pursuance of the sentence of the Court, gave a public dissection of the body at one o'clock to a numerous audience; indeed the class-room was quite crowded. . . . The quantity of blood that gushed out was enormous, and by the time the lecture was finished, which was not till three o'clock, the area of the class-room had the appearance of a butcher's slaughter-house, from it flowing down and being trodden upon." The West Port Murders, or an Authentic Account of the atrocious Murders committed by Burke and his Associates (Edin. 1829), p. 253. The same writer says: "It was really amusing to observe the different emotions displayed in those approaching and passing the body. . . . By actual enumeration it was found that upwards of sixty per minute passed the corpse." This disgusting exhibition was witnessed by about thirty thousand persons. The best account of the proceedings is the "Trial of William Burke and Helen M'Dougal," taken in shorthand by Mr. John Macnee, writer (Edin. 1829).

[2] "The conviction of Burke alone will not satisfy either the law or the country. The unanimous voice of society in regard to Hare is, *Delendus est;* that is to say, if there be evidence to convict him, as we should hope there is. He has been an accessory before or after the fact in nearly all of these murders; in the case of poor Jamie he was unquestionably a principal; and his evidence on Wednesday only protects him from being called to account for the murder of Docherty. We trust, therefore, that the Lord Advocate, who has so ably and zealously performed his duty to the country upon this occasion, will bring the 'squalid wretch' to trial, and take every other means in his power to have these atrocities probed and sifted to the bottom." Caledonian Mercury, 27th December 1828; Trial of Burke, Preface xviii.

desirable by many that the power of the Lord Advocate, as Public Prosecutor, to promise an indemnity to persons who gave evidence at trials for crimes in which they had themselves a share, should be decided by the authority of the High Court of Justiciary. All means were therefore taken to have the question fully discussed and finally settled.

A complaint was presented to the Sheriff charging Hare with the murder of Daft Jamie. He was examined and detained in jail. Mrs. Hare then presented a petition praying for his release. But the Sheriff, "in respect there is no decision finding that the right of the party to prosecute is barred by any guarantee, or promise of indemnity, given by the Public Prosecutor," refused to release the prisoner. Hare appealed to the High Court. Judgment was given on the 2d of February, when the Court held, by a majority of four to two, that Hare could not be prosecuted. "It is true," said Lord Mackenzie, "that, by the law of Scotland, there is a right of private as well as public prosecution, and that not for reparation only, but for punishment. But then it is just equally true, that unless the private party, having title to prosecute, come forward in time to prevent it, the King's Advocate, raising an indictment in his own name alone, comes to have full power of accusation vested in him. Accordingly, it seems that, in general, those ways by which a party obtains protection from punishment by the act of the Lord Advocate, do avail against the private prosecutor, who has not previously come forward." The Lord Justice-Clerk, who presided, was equally clear. "My opinion is," he said, "that it would be equally incompetent to the first law officer of the Crown, as it is to the private parties now before us, to institute any criminal procedure against Hare, steeped in guilt although he be, in reference to the facts contained in the indictment against Burke; and I can allow

that opinion, in no degree, to be influenced, *civium ardore prava jubentium.*"

Hare was secretly liberated, and succeeded in travelling by the stage-coach for some distance on his way to the south without being discovered. But on the road he was, by a curious coincidence, recognised by Mr. Sandford, who had been one of the counsel for Daft Jamie's mother. This gentleman unwisely told his fellow-passengers, and at Dumfries there was a riot, in which Hare nearly lost his life. He made his escape, and was seen for the last time on the highway near Carlisle. "He seemed to be moving onwards, trusting to circumstances, and without any fixed purpose, if we except the wretched one of prolonging as long as possible his miserable life."[1]

Sir William Rae was Lord Advocate till the fall of the Duke of Wellington's Ministry. Between July 1819, when Mr. Maconochie became Lord Meadowbank, and November 1830, when the Duke resigned, there had been eight vacancies in the Court of Session.[2] Lord Cockburn and Sir Archibald Alison say that Rae was anxious to become a Baron of the Court of Exchequer.[3] Either for that reason, or because, as some of his friends suppose, he did not think himself entitled, on account of his want of practice, to a judgeship, he always declined to go upon the bench of the Court of Session.

[1] Dumfries Courier (February 1829 ?), quoted in the Trial of Burke, Appendix, p. 54.

[2] Brunton and Haig, 550-552.

[3] Letters on the Affairs of Scotland, 153; Alison's Life and Writings, i. 295. The editor of the Court of Session Garland, a clever collection of squibs published in 1839, says: "The Justice-Clerk (Eskgrove) was succeeded in his baronetcy by his son, for many years Lord Advocate of Scotland, and who ought to have been Lord Chief Baron prior to the abolition of the Court of Session, but who was sacrificed to conciliate political opponents, and the honourable James Abercromby, afterwards Lord Dunfermline, received the appointment to which Sir William Rae was justly entitled; for he had served his country for many years in the difficult position of Lord Advocate with unusual ability and fairness. During his rule he held that a difference of opinion in politics did not exclude able lawyers from high offices," p. 108.

In the session of 1830 Ministers were in great difficulties. The Whigs had supported the Duke of Wellington in carrying the Catholic Emancipation Bill. But that measure had estranged the bulk of the Tory party; and the Whigs withdrew their support when they found that no further measures of liberal reform were to be introduced. The troubles of the Government were increased by the death of George the Fourth, which took place on the 26th of June 1830.

At that time the Lord Advocate was pushing through Parliament a Scottish Judicature Bill, by which the number of judges was to be reduced, and other changes made in the Court of Session. The measure passed the Commons three days before the King's death, and the Lord Advocate was directed to carry it to the Upper House.[1] In the first week of July, the Government, harassed by more important questions, wished to abandon it; but Rae threatened to resign if this was done.[2] The bill was, therefore, proceeded with, and received the royal assent on the last day of the session.[3] The judges were reduced from fifteen to thirteen; and the Divisions in future consisted of four judges each.[4]

Parliament was prorogued on the 23d of July, and dissolved on the following day. At the general election Lord Advocate Rae was returned for Buteshire.[5]

In spite of serious losses, Government had a nominal majority in the new Parliament. But the Ministers were surrounded by dangers. Their followers were disunited. The Opposition was elated by the result of the elections. The demand for Parliamentary Reform was growing louder; and one event after another foretold the approaching ruin

[1] Commons' Journals, 23d June 1830.

[2] "July 6, Cabinet.—Peel said the Lord Advocate would resign if we did not pass the Scotch Judicature Bill, so we must struggle through with it." Lord Ellenborough's Diary, ii. 303.

[3] Commons' Journals, 23d July 1830. [4] 1 Will. IV. cap. 69.

[5] On 21st August; Parl. Papers, 1878, lxii. ii. 324.

of the Tory party. The Duke declared against Reform; and next day the funds fell heavily. The King was to have visited the City on Lord Mayor's Day; but the Government said it would not be safe for him to venture among the people. A week later Ministers were defeated by twenty-nine votes on Sir Henry Parnell's motion to refer the civil list to a Select Committee. The Duke of Wellington resigned; and Lord Grey was sent for.

Lord Advocate Rae and Solicitor-General Hope at once resigned. Brougham is said to have proposed that Hope, though a strong Tory, should remain in office; but this scheme was soon given up. Jeffrey was appointed Lord Advocate, and Cockburn Solicitor-General.

Rae was a member of Parliament till his death. He was Lord Advocate in Sir Robert Peel's short-lived Administration of 1834, and again in 1841, when his party came into power; but his career after 1830 was entirely uneventful. He died at his country house, St. Catherine's, near Edinburgh, on the 19th of October 1842.

CHAPTER XX.

JEFFREY AND THE REFORM BILL.

FRANCIS JEFFREY was born at Edinburgh on the 23d of October 1773. His father, George Jeffrey, was a clerk in the Court of Session. His mother was the daughter of a Lanarkshire farmer. At an early age he was sent to the High School of Edinburgh, whence, in his fourteenth year, he went to the University of Glasgow. There he studied for two years. He then returned to Edinburgh, and attended classes in Scottish and civil law. These classes occupied only a small part of his time. He had few companions, and seems to have chiefly employed himself in private study, reading, translating, writing essays, and composing criticisms on British and foreign authors. From this quiet course of private work he was removed, in September 1791, to Queen's College, Oxford. With Oxford life Jeffrey was disappointed. He was able to admire the old town itself, the tokens of the past, the cloisters and the ivied walls, the aged trees, and the venerable monuments of learning. But the ways of Oxford life did not suit him. He had no sympathy with the modes of thought, the fashions of talk, and the social customs of the average Oxford man of that time. He was also home-sick. "Why," he writes, "must I always dream that I am in Edinburgh? The unpacking of my trunk rendered me nearly mad. I cannot bear to look into any of my writings. I have not now one glimpse of my accustomed genius or

fancy." He never became reconciled to the place; and it was with a light heart that he returned to Scotland in July 1792.[1]

The next two years were passed by Jeffrey in preparing for the bar. He went to lectures on the Law of Scotland, on the Civil Law, and on History. He also became a member of the Speculative Society. This famous debating club, founded in 1764, is still the great school of public speaking in the University of Edinburgh. The portraits of Jeffrey and his compeers hang upon its walls; some of the old furniture is still there; the debates take place, as of old, by candle-light. But never have so many able men been members at the same time as in the days of Jeffrey. Walter Scott, Brougham, Francis Horner, Lord Henry Petty, afterwards Marquis of Lansdowne, and many others, were his rivals in these debates. "He took," says Lord Cockburn, "a zealous part in every discussion. I doubt if he was ever silent throughout a whole meeting. The Tuesday evenings were the most enthusiastic and valuable of his week. It is easy to suppose what sort of an evening it was to Jeffrey, when he had to struggle in debate with Lansdowne, Brougham, Kinnaird, and Horner, who, with other worthy competitors, were all in the society at the same time. It has scarcely ever fallen to my lot to hear three better speeches than three I heard in that place,—one on National Character by Jeffrey, one on the Immortality of the Soul by Horner, and one on the Power of Russia by Brougham."[2]

Jeffrey had one defect which must have told against him in the Speculative, as it told against him in after life. His accent was very peculiar. When he went to Oxford, he said that the only part of a Scotsman he meant to leave behind was the language: "language is all I expect to learn in England." He did leave the Scottish tongue behind him;

[1] Cockburn. Life of Jeffrey, i. 1, 48. [2] *Ibid.* 55, 56.

but he learned only a bad imitation of the English. "The laddie," exclaimed Justice-Clerk Braxfield, "has clean tint his Scotch, and found nae English." According to Lord Holland, he "lost the broad Scotch and gained the narrow English."[1]

On the 13th of December 1794 he was called to the bar. His father was a Tory; and if he had joined the Tory party his talents would certainly have gained him speedy promotion. But his sympathies and convictions were on the side of the Whigs; and to the Whigs he steadfastly adhered. For some years he had almost no business. Once he thought of leaving the bar, and trying to make a living by literature in London. At another time he had almost made up his mind to go to India. "I have," he writes in September 1798, "been idle and rather dissipated all this summer. Of late I have had fits of discontent and self-condemnation pretty severely; but I doubt if this will produce anything for a long time to come. The thing, however, will certainly draw to a crisis in a year or two. My ambition, and my prudence, and indolence, will have a pitched battle, and I shall either devote myself to contention and toil, or lay myself quietly down in obscurity and mediocrity of attainment. I am not sure which of these will promote my happiness the most. I shall regret what I have forfeited, be my decision what it may. The unaspiring life, I believe, has the least positive wretchedness."[2] It was not long before his choice was made. In a few years he was devoted to the toil and contention of literary and political life.

At that time the decisions of the Court of Session were reported by two juniors, known as Collectors, who were chosen by the bar, and paid by a small salary. In the summer of 1801 both the reporterships were vacant. Jeffrey

[1] Carlyle's Reminiscences, ii. 51; Life of Jeffrey, i. 46, 47.
[2] Life of Jeffrey, i. 102, 103.

was about to marry his cousin, Catherine, daughter of Dr. Wilson, then Professor of Church History at St. Andrews. His practice was not yet worth a hundred guineas a year; and he was anxious to be made a Collector. The election took place on the 10th of July. There were two other candidates, both of whom were his juniors at the bar. But they were supporters of the Government. The contest was made a party question; and Jeffrey was defeated by a number of votes.[1]

The marriage took place on the 1st of November 1801.[2] He and his wife were both poor. He had almost no practice. A majority of the bar had sacrificed him to party feelings, and refused to help him. At this crisis the idea of starting the Edinburgh Review occurred to Sydney Smith, who was then in Edinburgh as tutor to Lord Webb Seymour. It was in Jeffrey's humble dwelling that Smith first mentioned his idea to a few friends. The matter was considered; and it was resolved to make the attempt. The first number, which appeared on the 10th of October 1802, contained five articles from the pen of Jeffrey.

Sydney Smith, assisted by Jeffrey, was editor of the new journal until his return to England. Jeffrey then became sole editor, an office which he held from 1803 till 1829. He wrote the first article in the first number, and his last contribution was in 1840.[3] During that long period he wrote about two hundred articles, on every variety of subject. As we read the volumes of his collected essays, we think of Jeffrey as he is described by those who knew him: the small active figure; the dark penetrating eyes, bright with intellectual fire; the black hair, and the shapely forehead; the oval face, whose delicate features are ever changing with

[1] Life of Jeffrey, i. 120, 121; Faculty Minutes, 10th July 1801. Jeffrey received 49 votes, and his opponents, Messrs. Forbes and Jardine, 97 and 93.

[2] Life of Jeffrey, i. 118.

[3] Preface to "Contributions to the Edinburgh Review."

the constant play of varied expression; and his appearance seems to harmonise with the extraordinary versatility of his mind. In these volumes, works on History and Fiction, Poetry and Law, Politics, Travels, and Science, are all discussed with equal zest, and with the same talent for criticism.

There is so much to admire in Jeffrey's articles that it is impossible to say in what he most excelled. The article on Beauty, perhaps the best known of all his contributions to the Review, is still unrivalled.[1] His disquisitions on Poetry are almost perfect. The early reviews of the Waverley Novels are the most interesting criticisms of these celebrated works which have ever appeared. He has but one rival. Macaulay began to write a few years before Jeffrey ceased to be editor of the Review. The article on Milton appeared in August 1825; in June 1829 Jeffrey retired. On the long roll of able men who have written for the great Whig journal, Macaulay is alone to be compared with Jeffrey. Yet their methods were different. Jeffrey discusses his author, pronounces a judgment upon his work, refutes or accepts his opinions, gives long quotations, criticises his style. He advances theories of his own, but, in the main, he is purely a critic. Macaulay, on the other hand, has often little or nothing to say about the work before him. He uses it for the purpose of introducing his own views. This difference is most apparent in their historical articles. Jeffrey, while not altogether avoiding his own reflections, confines himself mainly to giving an account of the book which he is reviewing. But Macaulay's mind is full of the period with which he has to deal. He knows it as if he had lived in it. He can picture to himself the look of the streets and the fields. He is acquainted with all the leading men and

[1] May 1811; a review of Alison's "Essays on the Nature and Principles of Taste."

women of the time, with their sayings, and doings, and writings. His mind is "soaked," to use his own word, with the literature of the period, not only with its State papers and grave chronicles, but with its gossiping diaries, its pamphlets, and its ballads. He is therefore independent of the author and what he has written. In conversation Macaulay loved to give a sample of an author's wares, he said; but in writing no critic ever quoted less. Take Jeffrey's article on Pepys's Diary. Macaulay would have given a short account of Pepys, but it is doubtful if he would have given a single extract from Pepys's Diary. He would have dismissed Pepys shortly, and written a brilliant description of London society during the closing years of the Stuart dynasty. How brilliant that description would have been is shown by the third chapter of the History of England. Jeffrey, on the contrary, devotes the whole of his article, after a few introductory remarks, to giving an account of Pepys and making quotations from his Diary. Again, if Jeffrey's article on Mr. Fox is compared with Macaulay's article on Sir James Mackintosh, this difference of method will be observed. Although, at the outset, Macaulay explains that he has "tried in vain to separate the book from the writer," he nevertheless passes, after a few pages, from a criticism of Mackintosh's account of the Revolution to a disquisition on that great event. Jeffrey, on the other hand, gives almost the whole of his space to a description and criticism of Fox's work.

It was with some misgivings that Jeffrey had undertaken to edit the Review. He was aware that the law agents, on whom he depended for professional employment, regarded all literary pursuits with suspicion. His practice did not, for some time, increase. But he gradually got business, and, in a few years, was employed in every description of case. In the General Assembly, the supreme ecclesiastical court

of Scotland, he was the leading counsel.[1] The introduction of jury trial in civil causes increased his practice enormously. "He instantly," says Lord Cockburn, "took up one side of almost every trial in what was then called the Jury Court, as if it had been a sort of right, and held this position as long as he was at the bar." The State Trials, which have been described in the last two chapters, gave him a chance of displaying, on a public stage, his talents as an advocate; and long before the Whigs came in he was among the leaders of the bar.

In June 1829 Sir James Moncreiff, Dean of the Faculty of Advocates, was promoted to the bench. A majority of the bar were Tories. Both Moncreiff and his predecessor, Cranstoun, were Whigs. Had party feeling been allowed to influence the choice of the Faculty, the Solicitor-General, Mr. John Hope, might have been elected. But Hope, who had previously refused to oppose Moncreiff, would not stand against Jeffrey, and the editor of the Whig journal was, to the honour of the Tory party, unanimously appointed Dean.

Jeffrey had, some time before, made arrangements for resigning the management of the Edinburgh Review.[2] As soon as the Solicitor-General's refusal to oppose him had made his election certain, he announced his opinion "that it was not quite fitting that the official head of a great law corporation should continue to be the conductor of what might fairly enough be represented as in many respects a party journal."[3] The ninety-eighth number of the Review, which came out in the month previous to his election as Dean, was the last he edited.[4]

The first Mrs. Jeffrey had died in 1805. Some years after her death Jeffrey met Miss Wilkes, a young American lady,

[1] Life of Jeffrey, i. 179. [2] Correspondence of Macvey Napier, 60.
[3] Contributions to the Edinburgh Review, Preface.
[4] Life of Jeffrey, i. 285.

daughter of a New York banker, and grand-niece of the notorious John Wilkes. He met her while she was on a visit to Edinburgh, and lost his heart to her. His friends expected that a marriage would speedily be arranged between them;[1] but Miss Wilkes returned to America sooner than was expected. Jeffrey, nevertheless, determined to cross the Atlantic, and bring her back as his wife. He made his will, intrusted the Review to the care of two friends, left his clients to do as best they could, and started for New York on the 29th of August 1813. In the first week of October he reached America, where he remained till January 1814, when he and his bride returned to Scotland. "Almost the whole happiness of his future life flowed from this union," says Lord Cockburn. Macaulay paid him a visit in the spring of 1828, and thus describes his private life:—"In one thing, as far as I observed, he is always the same, and that is the warmth of his domestic affections. Neither Mr. Wilberforce nor my uncle Babington come up to him in this respect. The flow of his kindness is quite inexhaustible. Not five minutes pass without some fond expression or caressing gesture to his wife or his daughter. He has fitted up a study for himself, but he never goes into it. Law papers, reviews, whatever he has to write, he writes in the drawing-room or in his wife's boudoir. When he goes to other parts of the country on a retainer he takes them in the carriage with him. I do not wonder that he should be a good husband: for his wife is a very amiable woman. But I was surprised to see a man so keen and sarcastic, so much of a scoffer, pouring himself out with such simplicity and tenderness in all sorts of affectionate nonsense. Through our whole journey to Perth he kept up a sort of mock quarrel with his daughter; attacked her about novel-reading, laughed her into a pet, kissed her out of it, and laughed her into it again. She and

[1] Life of Jeffrey, i. 214.

her mother absolutely idolise him, and I do not wonder at it."[1]

But this life of quiet happiness, which Macaulay's own affectionate heart taught him to appreciate, was interrupted soon after he became Dean of Faculty; and he was called away to take part in scenes and occupations for which he was, to a great extent, unsuited. In December 1830 the Whigs came into power, and Jeffrey was appointed Lord Advocate. He at once resigned the Deanship, and was succeeded by Mr. Hope.

Cockburn was Solicitor-General for Scotland. He had chosen his side in the darkest days of the Whig party, and had supported every sound project of reform. "We have come," he wrote on taking office, "upon the public stage in a splendid but perilous scene. I trust that we shall do our duty. If we do we cannot fail to do some good to Scotland." He had first-rate talents and a great capacity for practical business. He was a speaker of plain words, full of common-sense; always robust, sometimes coarse; honest at heart, but occasionally a little insincere. To Jeffrey he was warmly attached, but thought him wanting in knowledge of the world, and full of defects which impaired his usefulness to the party. Before Jeffrey had been Lord Advocate for a year, Cockburn regarded him as a failure. But he never forgot what Jeffrey had done for Liberal politics in Scotland, and was always ready to defend him.

The Whigs made no change in the position of the Lord Advocate, nor in the arrangements for the management of Scottish business in Parliament. During the first years of the new Government the question was sometimes raised in official circles. Cockburn, in the heat of the Reform struggle, came to the conclusion that a Secretary of State for Scotland was absolutely necessary, and wished his friend

[1] Trevelyan's Life of Macaulay, i. 147, 148.

Mr. Kennedy, the member for the Ayr burghs, to have the office.[1] He feared, however, that Scotland, jealous at the notion of being degraded into a province under a proconsul of its own, would resent the appointment of a Secretary of State.[2] Mr. Kennedy was afterwards made a Lord of the Treasury, with the special charge of Scottish business. But that was after the Reform Bill had passed; and, during the turmoil of the great controversy, Jeffrey, though personally willing to be relieved of his political duties, remained in the position which most of his predecessors had occupied. To the people of Scotland this seemed natural. The Lord Advocateship had been, for many years, a high political office. The reformers, too, were willing to intrust the management of Scottish affairs to a member of the bar; for members of the bar had been the great leaders of the popular party in that long struggle the issue of which was now about to be decided.

The royal burghs of Perth, Forfar, Dundee, St Andrews, and Cupar formed at that time a district of burghs, returning one member to Parliament. There was now a vacancy; and the Lord Advocate agreed to stand in the Whig interest. The Tory condidate was Captain William Ogilvy. On Thursday, the 13th of January 1831, the five delegates, chosen by the Town Councils of the five burghs, met in the Town Hall of Forfar to elect the member. It was known that the delegates from Perth, Dundee, and St. Andrews were Whigs, and that the delegates from Forfar and Cupar were Tories. Thus Jeffrey had a majority of three votes to two. But a protest was lodged against receiving the vote of the delegate from Dundee, on the ground that that burgh was, on certain legal grounds, debarred from taking part in the election. The Town Clerk of Forfar, however, had taken the opinion of counsel, and had been advised that he

[1] Cockburn to Kennedy, 3d Feb. 1832. "12 P.M., dined out, slightly elevated."

[2] Cockburn to Kennedy, 5th May 1832.

was bound to receive the vote of the delegate from Dundee. He did so; and Jeffrey was returned. The mob of Forfar was on the side of the Tory candidate. When the election was over Jeffrey and his friends came out into the street. They were at once surrounded and attacked. Cries of "There's Jeffrey, murder him!" were raised. Bludgeons were used, and stones were thrown. The Lord Advocate was pushed about, and struck several times. One of his party had his clothes torn off his back. The Provost of Perth, who was a Whig, was thrown down and trampled on; the Town Clerk of Forfar was very severely injured; and it was with great difficulty that they forced their way through the crowd and reached their inn.[1]

Jeffrey went to London and took his seat, subject to the result of an appeal against the vote of the Dundee delegate.

The country was now face to face with the question of Parliamentary Reform. In Scotland the state of the representation was far worse than in England. The population was, in round numbers, two millions three hundred and sixty thousand.[2] The franchise was in the hands of about three thousand persons. The county franchise was the privilege of the freeholders. Of these fully one-half were Paper Barons, voters who possessed no property, but had voting qualifications. In Midlothian, out of one hundred and seventy-two electors, one hundred and forty-one were paper voters.[3] In Dumfriesshire, out of eighty-two electors, forty were paper voters. In Buteshire, out of twenty-one electors, twenty were paper voters. In the other counties of Scotland the same state of affairs existed. These qualifications had been created, in the majority of cases, for party purposes, by the great families, who thus secured the power

[1] Courant, 15th Jan. 1831; Scotsman, 15th Jan. 1831.

[2] Census of 1831.

[3] "In Midlothian the manufactured votes form nearly *four-fifths* of the whole!" Scotsman, 18th May 1831.

of returning the county members. The burgh franchise was in the hands of the self-elected Town Councils. Edinburgh, the population of which was upwards of one hundred and sixty-two thousand, had thirty-three electors, the members of its Town Council; but the average number of voters in a Scottish burgh was nineteen, the average number of the corporations.[1] The distribution of the burgh seats was, moreover, grossly absurd. Glasgow, with a population of one hundred and forty-seven thousand, had one-fourth of a member, whom it shared with Renfrew, Rutherglen, and Dumbarton, whose united populations came to a little more than ten thousand. Paisley with twenty-six thousand inhabitants, Greenock with twenty-two thousand, Kilmarnock with twelve thousand, Falkirk with eleven thousand, had no representation in Parliament. But five small burghs in Fife, the united populations of which amounted to only six thousand, returned a member. Such were some of the abuses against which the Whig party had been fighting for years, and in defending which the Tory party was about to perish.

On the 1st of March 1831 Lord John Russell explained the Government scheme of Reform, and in doing so gave an outline of the changes which it was proposed to make in Scotland. There were to be fifty members instead of forty-five. In burghs the corporations were to be stripped of their absurd monopoly, and every householder rated at ten pounds was to have a vote. In the counties the franchise was to be given to the possessors of real property of the value of ten pounds a year, and to tenants, under a nineteen years' lease, paying fifty pounds of rent. This plan would, it was thought, add sixty thousand voters to the constituencies of Scotland.

[1] Parl. Papers, 1831. By the census of 1831 the population of Edinburgh, including the port of Leith, was 162,156.

On the 4th of March a number of petitions from Scotland in favour of Reform were presented. On that night Jeffrey made his first speech in the House.[1] "No man of fifty-five ever began a new career so well," was the verdict of Sir James Mackintosh. He spoke amidst applause. His speech was afterwards published at the special request of Government.[2] But his voice, which a critic by no means given to flattery describes as being in his younger days "clear, harmonious, and sonorous," was hoarse from the effects of bad health. The reporters complained of his accent, and said they could not understand him.[3] His friends who had heard him in Scotland were disappointed; but his speech more than holds its own with most of the orations which were delivered during these memorable debates.

On the 9th of March Lord John Russell, Lord Althorp, Lord Palmerston, Sir James Graham, Mr. Charles Grant, Mr. Stanley, the Attorney-General, and the Solicitor-General, were directed to bring in the English Reform Bill. A bill for Scotland was also ordered, the Lord Advocate taking the places of the Attorney-General and Solicitor-General.[4] In the debate the Opposition members laboured hard to convince the House that the people of Scotland were not in favour of a change. One member even declared that four-fifths of the wealth and intelligence of the country were against Reform; but as soon as a Tory member had stated that there were not many reformers in Scotland, a Whig member rose and pointed to the petitions which "whitened the benches like a snowstorm." The House might listen with incredulity to the assertions of Mr. Hume; but it was different when Sir Michael Shaw Stewart rose, and declared that the demand for Reform was loud and universal, and that he, for one,

[1] Hansard (3d series), iii. 59-81.
[2] Life of Jeffrey, i. 51.
[3] Carlyle's Reminiscences, ii. 51.
[4] Commons' Journals, 9th March 1831.

would support the bill. Nevertheless, in spite of the petitions for Reform, when the second reading of the English bill was carried, on the 22d of March, by the narrow majority of one vote, only thirteen Scottish members voted with the Government.

In Scotland the news that the second reading of the English bill had been carried was received with the wildest enthusiasm. In Edinburgh a general illumination was at once proposed. Some members of the Tory party complained that a public rejoicing should take place over the triumph of a policy to which they were opposed. But they were reminded how, during the long reign of Toryism, Whigs and Radicals had been compelled to take part in public rejoicings over events which they deplored. "We submitted," it was said, "in former times to the burdens which you laid upon our consciences. We made our windows glimmer, if not blaze, for the partition of Saxony, the annihilation of Venice, Genoa, and Poland, and mounted a white cockade for the restoration of the Bourbons, from which we augured nothing but evil to the cause of liberty."[1] The times had changed; and the triumph of popular principles was to be celebrated. The magistrates first resolved, by a majority, to issue a proclamation against the illumination; but they changed their minds, and issued a request that it should be general. The illumination took place on the night of the 28th of March. A brilliant crown blazed above the doorway of Holyrood Palace. The theatre, the public offices, and many shops and private houses, were adorned with variegated lamps. In some streets the windows of every house were lighted up. But many of those who lived in the best parts of the town took no part in the illumination. Their houses were attacked by the mob. For hours the streets were paraded by a crowd of men and boys, who broke the windows of every house

[1] Scotsman, 30th March 1831.

which was not illuminated; and it was daybreak before order was restored.[1]

In the meantime the petition against the Lord Advocate's return to Parliament was decided. The vote of the Dundee delegate was held to be invalid; and the election was nullified. A constituency was, however, found for Jeffrey in the Yorkshire burgh of Malton, for which he was returned on the 6th of April, in succession to Sir James Scarlett, who had taken the Chiltern Hundreds.[2]

The second reading of the English bill had been carried; but on the 19th of April Ministers were defeated by a majority of eight on General Gascoyne's motion that the number of members for England and Wales ought not to be diminished.[3] On the 22d Parliament was dissolved. The general election began. The contests were carried on in the midst of uproar and confusion. "The bill, the whole bill, and nothing but the bill" was the universal demand. The obstinate resistance of the Opposition had excited the feelings of the working classes to a dangerous pitch. In Scotland the people were, if possible, more eager than in England for Reform. They were also more violent. Men usually sober-minded and law-abiding were carried away by the fever of political anxiety, and joined the rabble in committing acts of senseless or wicked outrage. At Jedburgh, Sir Walter Scott, then in failing health, went to vote for the Tory candidate. He was groaned and cursed at on his way to the polling place. A woman spat at him from a window; and as he drove home cries of "Burke him!" were heard from an excited crowd.[4] Other disgraceful scenes took place in various parts of the country. The polling for Lanarkshire took place in a church. A furious mob filled the gallery, from which stones

[1] Scotsman, 30th March 1831; Courant, 31st March 1831; Annual Register, 1831, Chron. 60, 61.

[2] Life of Jeffrey, i. 314, 315; Parl. Papers, 1878, lxii. ii. 322.

[3] Commons' Journals, 19th April 1831.

[4] Lockhart, vii. 285-287.

and mud were thrown at the member for the county. He was returned; but when the poll was over an escort of soldiers was needed to conduct him through the angry crowd which surrounded the building. It was thought that the election of a member for the Haddington burghs depended on the election of a delegate from the burgh of Lauder. In the Town Council of Lauder the balance of parties was equal. If, therefore, one Tory Councillor could be kept from voting a Whig delegate would be elected. The mob captured a Tory Councillor, put him in a post-chaise, and carried him away. The stratagem succeeded; and a Whig delegate was chosen.

All over Scotland the feeling was for Reform, and many elections were going in favour of the reformers. It was expected that the Whigs would gain at least eight seats. In many burghs the corporations had yielded to the pressure of public opinion. But Midlothian was the stronghold of Scottish Toryism; and a majority of the Town Council of Edinburgh stood firm. A few days after the news of the dissolution reached Edinburgh a meeting had been held to support the Government, and to express to the Lord Provost and magistrates the earnest desire of the citizens that Jeffrey should be returned as their member.[1] The Lord Advocate himself was eager to represent the city, but thought that the Town Council would refuse to elect him.[2] His friends, nevertheless, persuaded him to stand. The Tory candidate was Mr. Robert Adam Dundas of Whiterigg.

The election was fixed for Tuesday, the 3d of May. There had been no contest in Edinburgh for forty years. The population of the city was one hundred and sixty-two thousand. The electors were the thirty-three members of the Town Council. But the citizens were deeply interested in the result. The Council Chamber was too small to admit

[1] Scotsman, 30th April 1831. [2] Life of Jeffrey, i. 318.

the numbers who sought admission. Numerous petitions and memorials in favour of Jeffrey were presented to the magistrates. One of these petitions was an immense roll of paper signed by seventeen thousand four hundred persons. There were no petitions in favour of Mr. Dundas. His supporters were content to believe that he had secured a majority of the Council, and to abuse Jeffrey for standing, on the ground that "a Lord Advocate ought never to expose himself to the violence of a contest."

In the morning the Lord Provost and magistrates attended service in St. Giles' Church, where a sermon was preached by one of the city ministers. At noon they went to the crowded Council Chamber. The candidates were already there. The confusion and pushing, caused by the crowds trying to get in, was so great that some persons were injured by being crushed against the doors and walls of the building. The Lord Provost stated that many petitions had been presented to the Council, and desired the clerk to read them. The petitioners were the members of various incorporated Trades. the Merchant Company, and other public bodies; and all, without exception, prayed the Council to choose Jeffrey as their member of Parliament.

The petitions having been read, the Town Council of Edinburgh proceeded, for the last time, to elect a member for the city. The Lord Provost proposed Mr. Dundas, whose name was received with groans and hisses by the spectators. Councillor Chambers proposed Jeffrey, amid loud cheers. The Provost was also proposed; but it was well known that the real contest lay between Jeffrey and Mr. Dundas.

Jeffrey spoke, and, in a few dignified words, asked the Councillors to give effect to the wishes of their fellow-townsmen. As he made this appeal to the thirty-three electors, each burst of cheering by those in the chamber was heard through the open windows, and taken up by the

thousands who stood outside. The votes were given. Seventeen voted for Dundas, fourteen for Jeffrey, and two for the Lord Provost. The newly-elected member attempted in vain to gain a hearing. The Lord Advocate interposed and tried to quell the uproar. "If," he said, "any expression of mine can have any effect in influencing those now assembled, I do hope they will allow Mr. Dundas a hearing." It was in vain. Up to the last moment the citizens had hoped that Jeffrey would be chosen. There was deep anxiety among the dense crowd which filled the square in front of the Council Chamber; and when the result of the voting was made known, shouts of "Down with the Dundases!" were heard on all sides, and a determined effort was made to burst into the Chamber. Jeffrey was able to leave by a side-door, near which his carriage was waiting. He was about to drive quietly away, when a band of his admirers insisted on taking the horses out, and themselves dragging him home.[1]

The crowd in front of the Council Chamber increased, and rioting began. The Lord Provost had had the courage to disregard the passionate desire of the citizens to have Jeffrey as their member. He now showed that his courage was equal to facing the anger of the mob. He left the Council Chamber along with some of his friends, and walked down the High Street, surrounded by a guard of constables. There was a shout of "Burke him! Down with the Bailies!" The crowd made a rush and drove off the guard. The Provost was kicked, pelted with mud, and at last, when they reached the North Bridge, which divides the Old Town from the New Town, knocked down. He was dragged to the parapet of the bridge, and was on the point of being thrown over, when he seized one of his assailants, exclaiming, "If I go, sir, you go with me!"

[1] Life of Jeffrey, i. 318; Scotsman, 4th May 1831; Courant, 5th May 1831; Edinburgh Ann. Reg. 1831.

He was then pulled back into the middle of the roadway, and, managing to escape, took refuge in a shop in one of the adjoining streets. An immense crowd collected on the spot. The shop was attacked, the windows were broken, and the lives of those within actually endangered. The Riot Act was read; but the people refused to disperse. Some leading Whigs implored the rioters to go away, but without effect. It was found necessary to send for the military, and a troop of dragoons came up and formed in front of the shop. The mob cheered the soldiers; the soldiers waved their swords in the air, and cheered in reply. The Lord Provost and his friends then ventured to come out, and were escorted home in safety by the dragoons.

It was supposed that the riot was now at an end; but, when darkness came on, it was renewed. The police were outnumbered; and for some time the mob had possession of the city. It was a bright moonlight night, and the crowd went from street to street, breaking the windows of well-known Tories, lighting bonfires, and resisting the attacks of the police with showers of stones. Dragoons, yeomanry, some companies of a foot regiment, and a number of blue-jackets, who had been ordered up from the port of Leith, were barely able to disperse the rioters. Thus ended the last Edinburgh election under the old system.[1]

At the time when the Edinburgh riot was taking place on account of the Lord Advocate's defeat, he was, in point of fact, a member of Parliament, having been, on the same day, returned again for Lord Fitzwilliam's pocket burgh of Malton.[2] A fortnight later he was also returned for the Perth burghs, on this occasion independently of the Dundee vote. He elected to sit for the Perth burghs.

The result of the general election in Scotland was a

[1] Annual Register 1831, Append. 311-313; Scotsman, 4th May 1831; Courant, 5th May 1831.

[2] Parl. Papers, 1878, lxii. ii. 335.

majority of three votes in favour of the Ministry.[1] In England the triumph of the Reform party was complete. A large majority was returned in favour of Government; and many leading members of the Opposition were defeated.

Parliament met on the 14th of June. On the 24th Lord John brought in the second Reform Bill. On the 8th of July the second reading was carried by a majority of one hundred and thirty-six votes.[2]

It had been rumoured, soon after the meeting of Parliament, that the bill for Scotland was to be put off till next session.[3] But this was a mistake. On the 1st of July Lord Advocate Jeffrey brought in the bill, but without making a speech. "I was strictly enjoined," he explained, "to avoid going into any discussion, and, indeed, had a written order from —— to move for leave without saying a single word."[4] A proposal had been made, while the bill was in preparation, that the burgh franchise for Scotland should now be fixed at fifteen pounds instead of ten.[5] The Lord Advocate, it was said, had agreed to this.[6] But the

[1] The burghs returned eleven Whig and four Tory members. The counties returned seventeen Tory and thirteen Whig members. Thus the whole of Scotland returned twenty-four Whigs and twenty-one Tories. The counties voted as follows:—For Whig candidates: Argyll, Banff, Bute and Caithness, Clackmannan and Kinross, Dumfries, Forfar, Inverness, Kirkcudbright, Orkney, Renfrew, Ross, Sutherland, and Wigtown; for Tory candidates: Aberdeen, Ayr, Berwick, Dumbarton, Midlothian, Elgin, Fife, Haddington, Kincardine, Lanark, Linlithgow, Nairn and Cromarty, Peebles, Perth, Roxburgh, Selkirk, and Stirling. The districts of burghs voted as follows:—For Whig candidates: Glasgow, Tain, Aberdeen, Perth, Anstruther, Kirkcaldy, Stirling, Haddington, Lanark, Wigtown, and Ayr; for Tory candidates: Inverness, Elgin, and Dumfries. Edinburgh, the only burgh which had a member for itself, returned the Tory candidate, Mr. Robert Adam Dundas of Whiterigg.

[2] 367 to 231. Commons' Journals, 8th July 1831.

[3] Letters on the Affairs of Scotland, 327.

[4] Life of Jeffrey, i. 320. [5] *Ibid.*

[6] "I am very much disturbed, and often greatly enwrathed, at our official defender's criminal candour and narrow-minded liberality. My God! only imagine Scotland having been degraded by a higher franchise than England or Ireland, and this by the act of Jeffrey! It requires all my affectionate devotion to the man to enable me to sustain these 'follies of the wise.' Will no devil suggest to him that justice to his friends is at least as amiable as injustice, in favour

suggestion was stoutly resisted by Sir John Dalrymple, afterwards eighth Earl of Stair. Twenty years before Dalrymple had contested Midlothian in the Whig interest. He had fought a desperate battle against the Tory party on its favourite battle-ground, and had been defeated; but his influence in the councils of the Whigs had ever since been great. He now succeeded in defeating a project which had caused much discontent among the reformers of Scotland; and the bill was, in all essential points, the same as that which had been brought in during the last Parliament.

The second reading was fixed for the 12th of July. But on that day the House went into Committee on the English bill, the discussions on which occupied forty sittings; and the Scottish bill was postponed from time to time. At last, on the 21st of September, the English bill passed the House of Commons by an enormous majority; and two days after Jeffrey moved the second reading of the measure for Scotland.[1] He expressed his belief that English members were not aware of the state of the franchise in Scotland. "Our system," he said, "is in all respects as close as the English nomination, but it differs from it in this, that it does not send to Parliament the representatives of the Crown, the peerage, the high aristocracy, or the great land proprietors, but of a small and insignificant oligarchy, of persons not greatly connected with the great landed interests of that country." He explained that for a long time there had been complete political apathy in Scotland, but that now there was a strong public opinion growing up hostile to the existing state of the representation. "It is this," he said, "which has made reformers of us all in Scotland, enthusiastic

of his enemies? However, he is an important person for the Scotch cause, and his failings must be kept as a tit-bit for his particular associates." Cockburn to Kennedy, 22d April 1831.

[1] Commons' Journals, 23d September 1831.

reformers of the lower classes, and resolute, conscientious reformers of all above them."

The Opposition moved that the bill be read that day six months; but few of the Tory members ventured to deny that some change was inevitable. One member confined himself to criticising the details of the bill. Another declared that many of the reformers now confessed that they had supported the measure without knowing its provisions. But the result of the debate was foreseen; and the second reading was carried by a majority of one hundred and fifteen.[1]

Some of the Whig members from Scotland were dissatisfied with the proposal to give only five additional members to Scotland. Being anxious to give the Government as little trouble as possible in the House, they had a private meeting with Lord Althorp, and asked for ten more members. This request was brought under the consideration of the Cabinet; and on a subsequent day it was announced that the bill would be amended so as to increase the representation of Scotland by eight members, instead of five as originally proposed, making the entire number of Scottish members fifty-three, instead of forty-five, the number fixed by the treaty of Union.

In Committee the clauses of the Bill were fiercely contested. The cry of "vested interests" was raised. It was robbery, the Opposition said, to deprive the paper voters of their rights; their monopoly was property in Scotland; votes were bought and sold; actions were raised and fought in the Courts for the purchase-money. At all events, therefore, compensation should be given. Only a few members were able to describe the history of the royal burghs, or to explain those processes of the feudal law by which voting qualifications had been created. But those on the Opposition side who could not discuss the antique charters of King Robert,

[1] 209 to 94. Commons' Journals, 23d September 1831.

or the Acts of Alexander the Third, and who were puzzled by the intricacies of Scottish Conveyancing Law, adorned their speeches by eloquent allusions to Scottish thistles, Scottish lions, Scottish waterfalls, the Grampians, and the poet Burns. "It is not destitute of beauty," said one orator, speaking of the thistle; "with us it is no sickly exotic, but blooms as luxuriantly on the mountain-side as in the sheltered valley, a fit emblem of our nation, hardy and formidable. So is it with some of our national institutions. To an English eye they appear barbarous or grotesque, but we are attached to them for many reasons, and chiefly because they are our own. There they stand, sir, testifying to all the world that the union of Scotland with the wealthier and more powerful realm of England was brought about, not by the sword of conquest, but by the compact of a solemn treaty betwixt two independent nations. They preserve our national distinction, and why should not this be kept up?"[1]

In the midst of so much oratory, in defence of fictitious qualifications and election by Town Councils, the Committee was suddenly brought to a close. At six o'clock on the morning of Saturday, the 8th of October, the peers, by a majority of forty-one, threw out the English bill on the second reading. In a few hours the newspapers, some of which appeared in mourning, informed the people of London of what had taken place. There was a general feeling of alarm. The House of Lords had, indeed, endangered the peace of the country. The funds fell; a rising of the masses was feared; the Tower and the Bank were provisioned; the stations of the troops which were to hold the streets were all arranged. In London nothing serious occurred. But in the provinces the excitement was greater, and grave disturbances took place.[2]

At Edinburgh, day after day, while the peers were dis-

[1] Mirror of Parliament, Monday, 3d October 1831.

[2] Lords' Journals, 7th October 1831; Roebuck's Hist. of the Whig Ministry, ii. 216-221; Walpole's Hist. Eng. from 1815, ii. 655; Wellington Despatches, viii. 24.

cussing the English bill, crowds had gathered at the Post-Office waiting for the arrival of the London mail. The Council of the Political Union and the Reform Committee posted up placards imploring the people not to resort to violence if the Lords threw out the bill. On Monday the 10th of October the news came. It was received with dismay; but the crowds dispersed in silence, and order was maintained throughout the city. "For God's sake," Jeffrey wrote to the Solicitor-General, "keep the people quiet in Scotland. I have written edifying letters to the Sheriffs of the manufacturing counties, and some additional troops have, on my earnest request, been sent among us. Nothing in the world would do such fatal mischief as riot and violence, ending, as it *now* must do, in lavish bloodshed, from which my soul recoils."[1]

When the House of Commons met on Monday the 10th, Lord Ebrington moved a vote of continued confidence in the Government, which, supported by the eloquence of Macaulay, was carried by an overwhelming majority. The Government set the House of Lords at defiance, and determined neither to resign nor dissolve, but to prorogue Parliament, and, after a short recess, to bring in the Reform Bill for a third time. The prorogation took place on the 20th of October.

The hotter bloods of the Tory part in Scotland were indignant that the Ministry had neither resigned nor dissolved Parliament; for they believed, and confidently asserted, that a reaction had begun against the Whigs. But in reality the feeling in favour of Reform was stronger than ever. In September Sir James Gibson-Craig had said, amidst the tumultuous applause of a great public meeting, "The people can do without the peers, but the peers cannot do without the people." This sentiment was now repeated; and the people waited in patience, well aware that, sooner or later, the peers would be compelled to submit.

[1] Scotsman, 12th Oct. 1831; Life of Jeffrey, i. 324.

Parliament met again on the 6th of December 1831. The third Reform Bill was at once brought in; and before Christmas the second reading had been carried by a large majority. After the recess the debates began again; but, when the third reading was reached, the Opposition had collapsed, and the bill passed the Commons without a division.[1] The history of the second reading in the Lords is well known; the threat of further resistance, and the assent of the King to a creation of peers if that should be found necessary. Early on the morning of the 14th of April 1832 the second reading was carried by a majority of nine.

The result of the debate was eagerly waited for in Scotland. The supporters of the Opposition believed that the bill would be thrown out. For months the Tory press had maintained that the country relied on the House of Lords, that the real heart of the nation was against the Government, and that the rabble alone, led by a few professional politicians of high talent, but misguided ambition, was in favour of Reform.[2] On the other hand, the supporters of Government were confident that the bill would at last be accepted by the peers. All doubts were now set at rest. On the forenoon of Sunday, the 15th of April, an enormous crowd assembled at the Post-Office in Edinburgh, awaiting the arrival of the English mail-coach. The mail did not bring the news, but an express was expected to follow. All day the streets, and the steep sides of the Calton Hill, were crowded. At last, about seven in the evening, a cry of "Clear the way!" was heard. "A coach and four horses came up, bringing the news of the debate, which had only terminated at 6.20 on the previous morning. The express had posted down in the short space of thirty-six hours, and the news was thus received nineteen hours before the arrival of the regular

[1] Commons' Journals, 23d May 1832.
[2] Blackwood's Magazine, Jan. 1832.

mail." The news was received with loud shouts. The coachmen wore white ribbons and rosettes; "and by this sign, and the slashing pace at which the vehicle drove, the villages at which no stop was made knew at once that it carried the message of peace."[1] The delight of the reformers was intense. The other side heard the news with disgust, but hoped that, in committee, the Lords would throw out the clauses which disfranchised the English close burghs, and those which gave votes to the ten-pound householders.[2]

The battle for Reform was not yet completely won. On the 7th of May, when the Lords went into committee on the Bill, Lord Lyndhurst moved that the disfranchising clauses should be postponed. Begin, he said, by giving privileges, not by taking them away. On this motion Ministers were defeated by a majority of thirty-five. Next day the King was requested to create such a number of peers as would give a working majority to the Government. The King refused; and the Government resigned. Before this was generally known Jeffrey went to see Lord Althorp. "He had not yet come down-stairs, and I was led up to his dressing-room, where I found him sitting on a stool, in a dark duffle dressing-gown, with his arms (very rough and hairy), bare above the elbows, and his beard half shaved, and half staring through the lather, with a desperate razor in one hand, and a great soap-brush in the other. He gave me the loose finger of the brush hand, and with the usual twinkle of his bright eye and radiant smile, he said,—'You need not be anxious about your Scotch bill for to-night, for I have the pleasure to tell you, *we are no longer his Majesty's Ministers.*"[3] That night, Lord Althorp in the Commons,

[1] Scotsman, 18th April 1832.

[2] "If schedule A and the £10 clause stand, there is an end of the Monarchy, the Church, and the Funds. Universal misery must ensue if these portals of Pandemonium stand open." Blackwood's Magazine, May 1832.

[3] Jeffrey to Cockburn, 9th May 1832; Life of Jeffrey, i. 330, 331.

and the Prime Minister in the Lords, announced that the Government had resigned.

In Scotland it was feared that some outbreak would take place. The popularity of the King had been waning for some time, and coarse lampoons against the royal family were being hawked about the country. The House of Brunswick, it was said, is nothing more to us than that of the poorest sausage-maker in Germany. Not a man of that family, from its first George to its first William, has shown either mental power or moral energy. The Queen is nothing more than a marvellously ill-favoured woman. She, the Duchess of Kent, the Duke of Cumberland, and Mrs. Jordan's son, are the enemies of the nation. The Lord Advocate knew that there must be great discontent when the royal family were openly abused in Scotland. "With your last official breath," he wrote to the Solicitor-General, "exhort and conjure lovers of liberty to be lovers of order and tolerance."

Popular feeling was, indeed, thoroughly aroused. A large public meeting was held, in the King's Park at Edinburgh, to vote against granting the supplies, to which the people of Glasgow, ever enthusiastic in the cause of Reform, offered to send six thousand men."[1] But no disturbances took place. "Everything here," writes the Solicitor-General, "and all over Scotland, is as could be wished. The people like rocks,—and volcanic rocks,—but perfectly peaceable."[2] Two days later he writes again: "What a scene this week has exhibited! What providences! The noble purity of Grey and the Whigs,—the spirit of the people, constitutionally and therefore safely exerted,—the base and natural expiration of Toryism,—the example of the worthlessness of mere military talent without public virtue."[3]

[1] Scotsman, 16th May 1832; Letters on the Affairs of Scotland, 406. [2] *Ibid.*

[3] *Ibid.* 408. At the meeting in the King's Park, Sir Thomas Dick Lauder was in the chair, and among the speakers were Sir John Dalrymple and Sir James Gibson-Craig.

In the meantime the House of Commons had adopted an address to the King, regretting what had taken place, and imploring his Majesty to call to his councils only such a Government as would pass the bill unimpaired. The Duke of Wellington attempted to form a Ministry, and was prepared to carry a Reform Bill, in defiance of all the charges of inconsistency which, he knew, would be brought against him.[1] Manners Sutton had agreed to take office, with the leadership of the Commons. Baring was to be Chancellor of the Exchequer. But Peel refused all offers of a place; and the Duke could not form a Ministry. The crisis lasted just seven days. Lord Lyndhurst's motion was carried on the 7th of May; on the morning of the 15th the Duke of Wellington recommended the King to send for Lord Grey. Lord Grey made it a condition of taking office that the King would, if necessary, create as many peers as were needed to carry the bill through the House of Lords. The King reluctantly yielded to this condition; but the Duke of Wellington and his friends, on a hint from his Majesty, ceased all further opposition, and no new peers were created. The Reform Bill was read a third time, and passed, on the 4th of June.[2]

1 Roebuck, ii. 286.

2 By a majority of 84 (106 to 22). The letter which Sir Herbert Taylor, the King's secretary, wrote to the hostile Lords, hinting that it was his Majesty's wish that no further opposition should be made to the bill, was dated 17th May 1832. Roebuck, ii. 334. It was almost exactly fifty years before (7th May 1782) that Mr. Pitt, in the House of Commons, first raised the question of Parliamentary Reform. The Scotsman of 6th June 1832 announces the passing of the bill with much triumph :—"Triumph of the Reform Bill! Joy! Joy! Joy! Our hopes are realised! The English Reform Bill was read a third time and passed on Monday, in the House of Lords. It would receive the King's Assent yesterday, and is, while we are now writing, the LAW of the LAND! Adieu to Rotten Burghs and Corruption for ever!" The Caledonian Mercury of 7th June 1832 says :—"Monday will for ever be a white day—*dies creta notandus*—in the calendar of English liberty. The people's bloodless victory was gained, at the last push, by a majority of eighty-four, 106 voting for, and a miserable forlorn remnant of 22 against, the third reading of the bill." The Edinburgh Courant of 7th June 1832 is neutral :—"The revival of trade will, we hope, follow the settlement of this great question." The English Reform Bill received the royal assent on the 7th of June.

The Lord Advocate moved the second reading of the Reform Bill for Scotland on the 21st of May. The debate was short, and there was no division. On the following day the House went into Committee; but by this time the opposition to Reform had taken the shape of counting the signatures to a petition and wrangling over the names of those who signed it, or disputing how many inches to each man should be allowed in calculating the number of persons at a public meeting. On the 27th of June the bill was read a third time, and passed the Commons without a division.

The Reform Bill, over which so many furious battles had been fought, was now out of Jeffrey's hands. "It is odd," he writes, "how strangely I felt as I walked home alone last night after all was over. Instead of being elated or relieved, I could not help feeling a deep depression and sadness, and I rather think I dropped a tear or two, as I paused to interrogate my own feelings in St. James Square. I cannot very well explain this, but a sense of the littleness and vanity, even of these great contentions, was uppermost in my mind."[1]

In the House of Lords no time was wasted. On the 4th of July Lord Chancellor Brougham moved the second reading, which was agreed to without a division. In Committee the most important amendment proposed was to give members of Parliament to the Universities of Scotland: one member to Aberdeen and Edinburgh, and one to Glasgow and St. Andrews. The scheme of creating University Constituencies had been spoken of for some time. It was very unpopular in Scotland, and was opposed by no one more strongly than by Cockburn. The amendment was now opposed by Government and defeated.

On the 13th of July the debate on the third reading was opened by the Earl of Fife, who made a long speech in

[1] Jeffrey to Cockburn, 28th June 1832; Life of Jeffrey, i. 334, 335.

favour of Reform. It was closed by the great Duke of Buccleuch, who to the last protested against the bill. There was no division. The long struggle was at an end. The royal assent was given on the 17th of July, and the Reform Bill for Scotland became law.

The passing of the Reform Act was celebrated at Edinburgh by a "Reform Jubilee," which took place on the 10th of August, under the auspices of the Trades Union Council.[1] In the morning thousands of the citizens assembled on Bruntsfield Links, part of the old "Borough Muir" of Edinburgh, on which James the Fifth encamped his army before marching to the field of Flodden. "Flags and banners," we are told, "to the amount of nearly five hundred, were amply thrown out upon a fine western breeze, giving the spectators an opportunity to examine and admire the tasteful and brilliant paintings upon each. An immense variety of models and insignia filled up the space between the ensigns: and the gilded batons, wands, and brass rods that glistened among the ranks were beyond all calculation."[2] Addresses were voted to the King, the House of Commons, and the Ministry. A chorus sang, "God Save the King." A procession of the Trades, in which fifteen thousand men took part, was then formed. It entered the city under a triumphal arch, which bore the motto, "A United People makes Tyrants tremble," and marched through the streets. Each trade was preceded by a band of musicians, and displayed the implements of its craft, along with flags and various devices. "The windows, balconies, and attics were

[1] The Edinburgh Trades Union was instituted in May 1832. Its objects (for avowing which a punishment of at least fourteen years' penal servitude would have been inflicted in 1793, if not later) were: "Union, Burgh Reform, Repeal of the Corn Laws, Free Circulation of Knowledge, Revisal of the Militia Laws, Separation of Church and State, Extinction of all Unmerited Pensions, Free Representatives in Parliament, Equitable Settlement of the National Debt, Sobriety, Industry, Economy, Improvement of the Working Classes, Employer and Employed United, Abolition of Slavery, Free Trade."

[2] An Account of the Edinburgh Reform Jubilee.

flowery with elegantly dressed ladies. The throng on the streets was also variegated like a blooming pasture. The flags and banners flapped and rustled in the breeze. The golden insignia floated in the sun."[1] In the midst of all this blaze of colour, under the brilliant sky, there was one black placard. It was dedicated to the memory of Muir, Gerald, and Palmer, the political martyrs of 1793.[2] Having traversed the city, the procession returned to the place of meeting, and broke up after giving three cheers for "The Triumph of the People."

The new constituencies were now busy preparing for the approaching general election. Some partisans on both sides were guilty of outrages against the freedom of voters. This evil was not so prevalent in Scotland as in England and Ireland; but in Scotland it existed to some extent. Tradesmen were warned that they must choose between voting for a certain candidate and losing the patronage of their customers. In some cases the warning came from the supporters of the Tory candidates, and in other cases from the political unions who supported the Whigs. As a rule these attempts at oppression were not successful; but nevertheless they were frequently made. In the counties many farmers complained that unfair pressure was put upon them by their landlords; and there, more than in the burghs, a feeling in favour of voting by ballot had begun to spread.

The Tory party suffered much from the weakness of their newspapers. There was no Opposition paper of any ability. The Courant, well conducted, and having the largest circulation in Scotland, was attached to no party. Every other paper of repute was Liberal. Blackwood's Magazine, a host in itself, was the only worthy champion of Toryism in the press

[1] An Account of the Edinburgh Reform Jubilee.
[2] Cockburn's Journals, i. 34.

of Scotland. Every country gentleman read Blackwood. In its pages he was told that the Grey Administration was rash, ambitious, and reckless; it threatened prodigious innovations; it was about to demolish the ancient institutions of the country; its supporters were a Jacobin mob, "as unfit to judge of the questions on which they have decided as they are to solve a question of Physical Astronomy, or follow the fluxionary calculus of La Grange." The Reform Bill was to enfranchise the large cities. The large cities were "hotbeds of corruption," and "great receptacles of guilt." Everything was going wrong. Ever since the battle of Waterloo the passion for innovation had been spreading over the country. Milton and Pope had been deserted for Moore and Byron. Ricardo and M'Culloch had taken the place of Adam Smith and Hume. The extension of education to the lower orders was fraught with peril. Working men would get nothing but mischief from reading-rooms and books. The Bible was the only book they ought to read; and the endeavour to teach them anything else was a delusion. Thus a crisis had come when the whole Tory party should unite as one man and fight the Government to the last. All friends to the Constitution should cease to take in the newspapers or journals which did not support the Opposition. Every seat must be fought at the general election, not necessarily for the purpose of carrying it, but in order to exhaust the resources of the other side. "Finally, let the Conservative party invariably and firmly act upon the principle of withdrawing their business from all tradesmen whom they employ, who do not support the Conservative candidate."[1]

At first the Opposition in Scotland believed that they would carry a large number of seats, and that their chances were not so desperate as had been feared.[2] An election fund

[1] Blackwood, January-July 1832.

[2] Lord Aberdeen to Duke of Wellington, 23d Aug. 1832, Wellington Despatches.

was subscribed in London; and the managers of the party agreed to pay the Tory candidates in Scotland their expenses if they polled a certain number of votes. The candidates called themselves Conservatives instead of Tories. All expressed popular opinions; but these were often listened to with suspicion.[1] The hopes with which the contest had been begun soon died away; and it was seen that a great majority of reformers would be returned.[2] When the general election came to an end, it was found that the Scottish counties had returned twenty-two Whigs to eight Tories, and the burghs twenty-two Whigs to one Tory, or a majority of forty-four votes to nine in favour of Government.[3]

Jeffrey and the Right Honourable James Abercromby were elected for the city of Edinburgh. They were opposed by a Tory candidate, Mr. Forbes Blair. Mr. Aytoun, a Radical, also entered the field, but retired in order to avoid endangering the seat, and advised his friends to vote for Jeffrey and Abercromby. Jeffrey made the usual speeches, and answered the usual questions. At one meeting, in the Waterloo Rooms, he was asked whether he thought it right to maintain the Established Church in Edinburgh by levying a tax on Dissenters as well as on members of the Church. His reply was that he "decidedly objected to giving an answer, because it would involve the question of maintaining the Established Church throughout the country, and it would be most unbecoming in him to express any opinion on such an occasion, and on such a subject." The election went smoothly. The nomination was on the 17th of December, and the polling took place

[1] Cockburn's Journals, 6th Aug. 1832. A Midlothian voter asked Sir George Clerk, who was canvassing the county on the Opposition side, what he thought of the new system. He said he was a Reformer. "No, Sir George," was the answer, "you 're only a Conformer: I can't vote for you."

[2] Duke of Wellington to Duke of Cumberland, 24th Sept. 1832.

[3] Caledonian Mercury, 19th Jan. 1833.

on the 18th and 19th. When the poll closed the Whig candidates had won by a large majority.[1] The ceremony of chairing the members was duly performed. After a procession of trades and bands of music "came the two members for the city, seated in triumphal chairs and drawn by four beautiful bay horses. The chairs were placed upon a light flat car, and were covered with blue merino and ornamented with buff fringings and tassels. . . . The postilions were richly decorated with buff and blue favours, and the whole equipage had a very gorgeous and attractive appearance."[2]

When Parliament met in February 1833 Jeffrey went to London. "The only friend," says Lord Cockburn, "besides his wife, daughter, and servants, that he took with him, was one he often mentions, 'Poor Polly,' a grey and very wise parrot. He was attached to all that sort of domestic companions, and submitted to much banter on account of the soft travelling basket for the little dog Witch and the large cage for this bird. The hearth-rug and the sofa were seldom free of his dumb pets. He was very unwell for above two months after he arrived, in the trachea, and generally, and nearly voiceless."[3]

The passing of the Reform Bill had increased his troubles. In the ranks of an army there are always some

[1] The numbers were—Jeffrey, 4028; Abercromby, 3855; and Blair, 1529.

[2] Scotsman, 22d Dec. 1832. A University magazine of the year 1832 thus describes how some of the leading characters of the election might be known:—"Aytoun, the radical, by a snub nose, sinister eye, dirty face, and being left-legged. . . . The Lord Advocate, *by a mean, mercenary, Cowgate, political-unionist kind of appearance.* The Blackwoods, by an abominable smell of the counter. And their *factotum*, North, by a north-east squint of his eye, and a profusion of dirty uncombed carrotty locks." The Anti-Nemo, 30th Nov. 1832. The Lord Advocate's dislike to soliciting votes is thus noticed in another publication:—

> "If Jeffrey don't behave with greater tact,
> He'll lose th' election on the Treating Act.
> From drink or dinners though he seems exempt,
> He treats his voters daily with—Contempt."
>
> The Ten Pounder, 24th Nov. 1832.

[3] Life of Jeffrey, i. 341.

men who are able to march faster than others. These must "mark time" till their comrades join them. As the strength of the chain is the strength of the weakest link, so the speed of an army must be regulated by the powers, not of the speediest company, but of the slowest. So is it in political warfare. Some are always in front; some, as brave and honest, are often behind. If those in front are obedient to party discipline they wait. Gradually, if their position is sound, they find the ranks closing up behind them. The order for a general advance is given, and the battle, which rashness, or disorder, or a premature movement, would have lost, is won by the irresistible force of union. Many of the newly enfranchised reformers failed to perceive that all they hoped for could not be obtained at once. "In the first flush of their liberation," says Lord Cockburn, "every one desirous of distinguishing himself by his little bit of reform rushed with his project to the Lord Advocate; and if he found that Government or Parliament were not to concede in a moment all that he wanted, abused his Lordship as a changed man."

The Lord Advocate had now, however, the assistance of Mr. Kennedy, member for the Ayr burghs, who had some time before been made a Lord of the Treasury, on the understanding that he would devote himself, in particular, to Scottish business. Jeffrey had very readily availed himself of Mr. Kennedy's help. "You see," he said, writing in November 1832, "I already lay on you the full burden of the Treasury Lord for Scotland."[1] The Solicitor-General for Scotland, too, did all in his power to relieve the Lord Advocate. "I am more and more convinced," he said, "every day, or rather hour, that Scotland never can be managed without some known and responsible person acting, no matter under what name, as Secretary, *different from the Advocate*, not

[1] Letters on the Affairs of Scotland, 431.

only because *no* Lord Advocate *can* conduct everything, but because, even if he could, he ought not to be allowed or required to do so."

In 1834 Mr. Kennedy resigned his seat in Parliament. "I hope to God," Cockburn wrote, "that your seat at the Treasury is to be supplied by some worthy Scotchman, or at least by some man whose peculiar business shall be Scotland. Now that our public business is all done in London, this is not convenient alone, but absolutely necessary."[1] There can be little doubt that this opinion was perfectly sound. Since then the machinery of Government has become more and more complicated, and almost the whole management of Scottish affairs has been thrown upon the Lord Advocates. The result has been that, not by the fault of the Advocates, but by the force of circumstances, these affairs have been to a great extent neglected. There has been no system. Useful legislation has been frequently delayed. Scottish bills in Parliament have been considered of little importance. The one official member for Scotland has been overworked and burdened with an undue proportion of duties and responsibilities. On constitutional grounds the abolition of the Scottish Privy Council, at the beginning of last century, was absolutely necessary. In 1725 and 1746 the existence of a Secretary for Scotland was found to be incompatible with the proper government of the people. But the difficulties which then embarrassed the Executive have passed away, and the Scottish Department might safely be revived. The establishment of such a Department would not "degrade," as is sometimes maintained, "the ancient office of Lord Advocate." The holder of the office would still enjoy the high political influence possessed by his predecessors from time immemorial, although

[1] Cockburn to Kennedy, 1st Jan. 1834, Letters on the Affairs of Scotland. 496.

he lost that sole control of Scottish affairs which, by mere chance, passed into the hands of the Lord Advocate, during the period which followed the abolition of the office of Secretary of State for Scotland.

Jeffrey had now to deal with the question of Burgh Reform. For half a century the Whigs had been in favour of permitting the citizens to choose their magistrates. The feeling in Scotland was keen on the subject, and much of the eagerness with which the burgh voters had supported the Whig candidates was owing to the fact that it was believed that a Whig Parliament would pass a Burgh Reform Act. The chief point aimed at was the abolition of the system of self-election. In November 1832, before his election for Edinburgh, the Lord Advocate wrote to London for information as to the views of the Government,[1] and was able to inform a deputation, which waited upon him to urge the claims of the burgesses, that Lord Grey was in favour of a measure which would put the election of magistrates into the hands of the citizens.[2] This pledge was redeemed in the spring of 1833. In March the Burgh Reform Bill was introduced.[3] It was referred to a committee consisting of all the Scottish burgh members, of whom there were twenty-three, instead of being discussed, in the usual way, by a committee of the whole House. The result of this experiment was not satisfactory to the Lord Advocate. "Our Committee," he writes, "—I mean the Scotch Burgh Committee—goes on as ill as possible. . . . They chatter, and wrangle, and contradict, and grow angry, and read letters and extracts from blockheads of town-clerks and little fierce agitators; and, forgetting that they

[1] Letters on the Affairs of Scotland, 429. [2] Scotsman, 1st Dec. 1832.

[3] In May 1782 Mr. Pitt first raised in the Commons the question of Parliamentary Reform. In May 1832, just fifty years after, the "final agony" of Parliamentary Reform took place. In March 1784 the first meeting of delegates for the Reform of the Scottish Burgh system was held. In March 1833 Lord Grey's Government brought in the Burgh Reform Bill.

are members of a great Legislature, and (some of them) attached to a fair Ministry, go on speculating, and suggesting, and debating, more loosely, crudely, and interminably than a parcel of college youths in the first noviciate of disceptation."[1] The question was, however, settled before Parliament rose. Two bills were passed, one of which applied to the old royal burghs, and the other to those burghs which returned members under the Reform Act. The old close system was abolished; and the townsmen had in future the power of choosing the town councillors.[2] "It makes me start," Jeffrey writes, "when I think of this as a reality, which I have been so long accustomed to cherish as a dream by night and a vision only in the day. It is something to have had even an official and accidental connection with two such measures as Parliamentary and Burgh Reform."[3]

Jeffrey was now anxious to retire from public life. The constant worry and excitement of his position as Lord Advocate had injured his health. They left him little time for literature or the enjoyment of domestic quiet. Before Parliament rose, in August 1833, he had expressed a desire "to retreat to a calmer and less elevated region." In May 1834 there was a vacancy in the Court of Session, occasioned by the death of Lord Craigie, and Jeffrey resolved to go on the bench. "I am," he writes to Solicitor-General Cockburn, "no longer in Parliament after two hours, and no longer Lord Advocate. A new writ will be moved for Edinburgh to-night, on my acceptance of office. I have just taken my last peep into that turbulent, potent, heart-stirring House of Commons, and finished an hour ago the last argument I shall ever deliver from any bar. There is something sad in these finalities, and my present feeling is of that character:

[1] Life of Jeffrey, i. 345.
[2] 3 and 4 Will. IV. cap. 76, 77.
[3] Life of Jeffrey, i. 350, 351.

but through this dimness I see a bright vision of leisure, reason, and happiness." He had mixed much in London society, and was very popular in the House. The Scottish members gave him a farewell dinner; and it was with the esteem of all who knew him in political life, whether as friends or foes, that he retired into the comfortable obscurity of the bench.

In the representation of Edinburgh he was succeeded by Sir John Campbell, then Attorney-General and afterwards Lord Chancellor, who had just been defeated at Dudley. While the canvass was going on, Lord Stanley, Sir James Graham, Lord Ripon, and the Duke of Richmond, left the Government. An express, sent down from the Carlton Club with the news, reached Edinburgh during the night before the polling. The Conservative Committee at once posted handbills all over the town, announcing the "utter ruin of the Whig cause."[1] But Jeffrey had the satisfaction of hearing, when the poll closed, that his place was filled by a member of that party which he had so long and faithfully served.

On the 6th of June he took his seat on the bench. "Jeffrey is a Lord of Session!" exclaimed Cockburn, "an actual red-gowned, paper Lord. A framer and lover of acts of sederunt. An admirer of the *Nobile officium*. A deviser of interlocutors. A hater of the House of Lords. He nods over the same bench where nodded the dignified Eskgrove, and adorns the long pure cravat which typified the calm elegance of the judicial Braxfield. I wish you had seen him as he took his seat. Part of the ceremony consists in his going behind their Lordships, the whole being present, from right to left, where his place is, shaking hands with each as he passes. Four cordial shakes there were, Mackenzie's, Moncreiff's, Cranston's, and Fullerton's. But the other nine!

[1] Campbell's Lives of the Chancellors, vii. 581.

Had you but seen Charles Hope hailing as a brother the Editor of the Edinburgh Review; Balgray polluting his Perthshire palm with that of the framer of the Reform Bill; —— clenching his Beacon fingers, as the dog whom, in the year 1802, he caused the Faculty to reject from being even a Collector of Decisions, approached; Glenlee grinning—— at the challenger of David Hume; and Meadowbank taking him all in his arms with ostentatious hypocrisy."[1]

Jeffrey left his politics in London. From the day of his retirement to the bench till his death he studiously kept aloof from all concern in party matters. A few months after Jeffrey became a judge Lord Grey visited Scotland. He received an enthusiastic welcome. From the time he crossed the Tweed, under a triumphal arch, till the moment when he rose, in the presence of two thousand seven hundred persons assembled at a banquet in his honour, to return thanks for the toast of his health, his reception was like a royal progress. At Floors, where he was the guest of the Duke of Roxburghe, a fête was held in his honour. He spent the Sunday before he entered Edinburgh at Oxenfoord, the seat of Sir John Dalrymple, now the Whig member for Midlothian, and left the parish church of Cranston after service between two rows of persons assembled from all parts of the country, who uncovered as he passed. On the following day, Monday the 15th of September, when he entered Edinburgh, the streets and house-tops were more crowded than they had been since the day when George the Fourth came to Holyrood. There was a procession of the Trades, and the Freedom of the City was presented to him in a gold box. In the evening there was a public dinner in a huge building erected for the purpose.[2] The Earl of Rosebery was in the chair. The Lord Chancellor of

[1] Letters on the Affairs of Scotland, 513, 514.

[2] The Grey Festival; being a Narrative of the Proceedings connected with the Dinner given to Earl Grey, etc.

England and many leading personages were present. Jeffrey "sighed at not being there;" but he was not forgotten. One of the speakers was Mr. Abercrômby, who said: "It now only remains that I should endeavour, imperfectly I know it must be, to do justice to one of the most distinguished and gifted sons of Scotland, who is necessarily absent on this occasion. When I pronounce the name of Francis Jeffrey—(*loud cheers*)—I anticipate that the recollection of the irresistible force and eloquence with which he pointed out the vices of our representative system, or, I should rather say, the unanswerable arguments he adduced to prove the non-existence, for any good and lawful purpose, of a representative system in Scotland, will be present to all your minds. You will recollect that it was he who matured and carried into effect the great measure of Burgh Reform in Scotland; and thus his short career as Lord Advocate was illustrated by the passing of these two great measures, under his immediate direction and superintendence."

Lord Jeffrey retained his seat on the bench till his death in 1850. As a judge he was a great success, able, industrious, and patient. According to Cockburn, he had but one fault. His voice was too frequently the "*vox judicis nimium interloquentis.*"[1] But if he spoke too often, he spoke to the point, solely for the purpose of assisting counsel, and with no idea of impressing the onlookers in the public part of the court-room.

His health gradually failed. But his was a beautiful old age. "He mellowed so sweetly that there was no period of his life when he attracted more respect and affection than during its last five years. Time also changed his outward appearance. The bright manly eye remained, and the expressive energy of the lips, and the clear sweet voice, and

[1] Sir James Moncreiff said that Lord Jeffrey's judgments should not begin, "The Lord Ordinary having heard parties' procurators," but, "Parties' procurators having heard the Lord Ordinary"!

the erect rapid gait. But the dark complexion had become pale, the black hair grey, the throat told too often of its weakness, the small person had become still smaller, and the whole figure evinced the necessity of great care."

The end came on the 26th of January 1850, when, after a short illness, he died in his seventy-seventh year, conscious to the last, tranquil, and without suffering. When the news of his death was known, his eloquence, his long public services, his brilliant success, were little thought of; for his friends could only remember how much of what was kind, and simple, and good lay buried in the grave of Francis Jeffrey.

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